

A 1824

D I G E S T

O F T H E

L A W S of E N G L A N D.

By the Right Honourable

Sir J O H N C O M Y N S, Knight ;

Late Lord Chief Baron of His Majesty's Court of Exchequer.

Continued down to the present Time,

By a G E N T L E M A N of the I N N E R T E M P L E.

V O L. IV.

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MDCCLXXX.

THE
DIGEST
OF
THE
LAW
OF
ENGLAND

By the Right Honourable
SIR JOHN C. D. KNIGHT
The Lord Chief Baron of the Exchequer



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EXPLANATIONS.

A.

<i>Abr. Ca.</i>	Abridgment of Cases in Equity.
<i>Acc. or Ag. or Agr.</i>	Accord, or, Agrees.
<i>Adj.</i>	Adjudged : Sometimes, Adjourned.
<i>Adm.</i>	Admitted.
<i>Ante and Post.</i>	References to Divisions and Subdivisions of the same Title.
<i>App. H. Jer.</i>	See Falle's Account of Jersey, (printed 1694) chap. 1. p. 5.—chap. 3. p. 89, 97, 98.—chap. 4. p. 102.—chap. 7. p. 201, &c. King John's Constitutions.
<i>Arg. 1 Ch. R.</i>	Argument in 1 Chancery Reports on the Jurisdiction of the Chancery.
<i>Aff.</i>	Liber Affisarum. The References by Placita.
<i>Ast. Ent.</i>	Aston's Entries.
<i>Ayl. Int.</i>	Ayliffe's Introduction to his Parergon. Edit. 1726.

B.

<i>B. or C. B.</i>	Common Bench, or Common Pleas.
<i>B. R.</i>	King's Bench.
<i>B. Tr.</i>	Bishop's Trial.
<i>Bac. H. 7.</i>	Lord Bacon's Life of H. 7.
<i>Bend.</i>	Benloe's Reports; Sometimes referred to by <i>Placitum</i> , sometimes by <i>Page</i> ; when the former, it has <i>pl.</i> before the Figure.
<i>Bl. or Bl. Nom. or Blo. Nom.</i>	Blount's Law Dictionary.
<i>Bo. R. Act.</i>	Booth of Real Actions.
<i>Br. Jud.</i>	Brownlow's Brevia Judicialia. Edit. 1662.
<i>Bra. Treat. de Burghs.</i>	Dr. Brady's Historical Treatise of Cities and Boroughs.
<i>Bro.</i>	Brooke's Abridgment.
<i>Bro. Ent. or Brow. Ent.</i>	Brown's Entries.
<i>Bro. R.</i>	Brownlow Redivivus.
<i>Bro. V. M.</i>	Brown's Vade Mecum.
<i>Brownl. or 1 & 2 Brow.</i>	Brownlow's Reports.
<i>Brownl. Ent.</i>	Brownlow's Entries.
<i>Bur. H.</i>	Burnett's History of the Reformation.
<i>B. R. H.</i>	Cases in the King's Bench in the Time of Lord Hardwicke.
<i>B. M.</i>	Burrow's Reports in the Time of Lord Mansfield.
<i>B. S. C.</i>	Burrow's Settlement Cases.

C.

<i>C. B.</i>	Common Bench, or Common Pleas.
<i>Ca. Ch.</i>	Cases in Chancery. Edit. 1735.
<i>3 Ca. Ch.</i>	3d Vol. of Cases in Chancery, or Select Cases in Chancery: Contains the <i>D. of Norf. Case.</i>

Ca.

- Ca. Eq.*
Cal.
Ca. Pa. or Ca. Parl.
Cart.
Cartb.
Cbil.
1, 2 & 3 Cb. R.
*Cb. R. without a pre-
ceding Figure.*
Cl. Aff.
Clift.
Cod. or Cod. Ju. Eccl.
Comp. Att. or C. Att.
Const. Oth.
Cont.
Cot. Abr.
Cot. Ab. Pref.
Crompt. Off. of Sberiff.
Crompt. or Crompt. Just.
C. t. T.

D.
D.
D. of Norf.
D. of Pl. or D. of Plu-
ralities.
D. & St.
Dal.
Dalt.
Dalt. Sb.
Dan.
De Jure M.
Degs.
D'Ew. or D'Ewes.
Dod. Nob.
Dub.
Dugd. O. J. or Or. J.
or Jud.
Dugd. Sum.
Duke.
Dy.

E.
Eq. Ab. or Eq. Abr. or
Eq. Ca. Ab.
- Gilbert's Reports of Cases in Equity.
Callis on Sewers. 4to. 1686.
Cases in Parliament.
Carter's Reports.
Carthew's Reports.
Chillingworth.
Reports of Cases in Chancery in the Reigns of K.
Charles 1st, &c. examined with the third Edit.
Folio 1736, by the Pages of the Octavo Edit.
which are there preserved in the Margin. [Note,
1 Cb. R. contains the *Earl of Oxford's Case*,
and the *Argument on the Jurisdiction of the*
Chancery, which last is described by *Arg. 1 Cb.*
R]
Chancery Reports, *tempore* Finch.
Clerk's Assistant.
Clift's Entries.
Gibson's Codex.
Complete Attorney. 1st Edition 1676.
Constitutiones Othoni at the End of Lyndwood's
Provinciale.
Contra.
Sir Robert Cotton's Abridgment of the Records.
Preface to the above.
Fitzherbert's Offices of Justices of Peace, &c. en-
larged by Richard Crompton.
Cases in the Time of Lord Talbot.

Dictum.—Sometimes a Letter of Reference to a
Book.
Duke of Norfolk's Case in 3 Cases in Chancery,
or, Select Cases in Chancery.
A Defence of Pluralities. 8vo. 1692.
Doctor and Student.
Dallison's Reports.
Dalton's Justice. Edit. 1727.
Dalton's Office of Sheriff.
Danvers's Abridgment.
Molloy de Jure Maritimo. 3d Edit. 1682, or 5th
Edit. 1701.
Degge's Parson's Counsellor. Edit. 1703.
Sir Simon D'Ewe's Journals.
Honour's Pedigree, or the several Fountains of
Gentry, &c. by Sir John Doderidge. 1657.
Dubitatur.
Dugdale's Origines Juridiciales.
Dugdale's Summons to Parliament.
Duke's Law of Charitable Uses.
Dyer's Reports. Edit. 1688.

Abridgment of Cases in Equity.

E X P L A N A T I O N S.

v

Eq. Ca. or Eq. R.
Eq. Ca.

Gilbert's Reports of Cases in Equity, 2d Edit.
Sometimes Gilbert's as above.—Sometimes the
Second or Equity Part of 2 *Mod. Ca.* (Modern
Cases in Law and Equity;) but when the latter
is meant, it is markt in the Margin.

E. of Cov.

Earl of Coventry's Case at the End of Francis's
Maxims of Equity.

E. of Oxford.

Earl of Oxford's Case, 1 *Cb. R.*

Essay for Amendment of
the Coin.

By William Lowndes. 1695.

F.

F. N. B.

Fitzherbert's *Natura Brevium*. The Pages accord-
ing to the old Editions.

F. g. or Fitzg.

Fitz-Gibbon's Reports.

Fl.

Fleta.

Finch Ch. R.

Chancery Reports *tempore* Finch.

Fitz. or F.

Fitzherbert's Abridgment.

Forst.

Forster's Digest of the Laws relating to the Cus-
toms, &c.

Fort.

Fortescue de *Laudibus Legum Angliæ*.

Fox M.

Fox's Martyrology.

Fran. or Fra.

Francis's Maxims of Equity.

Fra. E. of Cov.

Earl of Coventry's Case at the End of Francis's
Maxims of Equity.

G.

G. 2. with a Figure pre-
ceding, or, Temp. G. 2.

Reports of Cases in Chancery and the King's Bench
in the 4th, 5th, 6th and 7th Years of *K. Geo.*
2d.

Godb.

Godbolt's Reports.

Gol. or Goldf.

Gouldsbrough's Reports.

Gro. de j. b. & p.

Grotius de *Jure Belli & Pacis*.

H.

H. I. P. or Ha. I. P. }
or Hal. I. P. or H. }
Parl. or Ha. Parl. }

Sir Matthew Hale's Original Institution Power and
Jurisdiction of Parliaments.

Hale Sheriff's Accounts.

Sir Matthew Hale's Treatise of Sheriff's Accounts.
Edit. 1683.

H. P. C. or H.

Hale's Pleas of the Crown. 8vo.

Han. Ent.

Hansard's Entries.

Hans. Introd. or Int. }
or Han. Int. }

Hansard's Introduction to his Book of Entries.

Hard.

Hardres.

Hist. de C. L.

Hale's History of the Common Law.

J.

Jan. Angl.

Jani Anglorum *Facies nova*.

Jen. (S. L.)

Sir Leoline Jenkins. (The References are to his
Argument on the Jurisdiction of the Admiralty,
and his Charges at the Admiralty Sessions.)

Jenk.

Jenkins's Centuries.

Infra and Supra.

References to the same Division or Subdivision.

Jon.

Sir William Jones's Reports.

2 Jon.

Sir Thomas Jones's Reports.

K.

*Kel. or Keil.**Kels.**Ken. Imp.**Kit.*

Keilwey's Reports.

Kelynge's Reports.

Kennet of Impropriations.

Kitchin of Courts. French Edition 1623.

L.

*Lamb.**Lamb. Ch. or Lamb. Off.**Ch.**Lut. Ent.**Lind. or Lind. Off. Arcd.**Lit.**Lit. with S.*

Lambard's Justice. Edit. 1607.

Lambard's Duties of Constable, Churchwarden, &c. usually bound up with Lambard's Justice.

Lutwyche's Entries.

Lyndwood's Provinciale. Edition. 1679.

Littleton's Reports.

Littleton's Tenures; S. for Section.

M.

*Ma.**Mad.**Mad. Form.**Mad. Form. Int.**Manw.**Mar.**Mars.**Mills.**Mod. Ca.**2 Mod. Ca.**Mod. Int.**2 Mod. Int.**Moll. de Jur. M.**M. P. Ex.*

Malyne's Lex Mercatoria. Folio Edition, 1686.

Madox's History of the Exchequer.

Madox's Formulæ Anglicanum: refers to the N^o. of the Formula.

The Dissertation prefixed to Madox's Formulæ Anglicanum: refers to the Page.

Manwood's Forest Law. 3d Edition.

March's Reports. When the Reference is mark't *pl.* it is to the Placita; without that, to the Page.

Advice concerning Bills of Exchange, by Marius. Folio Edit. 1684.

Rules and Orders of C. B. by Milles, printed 1732. or Edition 1729.

6th Modern Reports.

Modern Cases in Law and Equity. 1st Part.

Brown's Modus Inrandi.

Same Book. 2d Part.

Molloy de Jure Maritimo. 3d Edition 1682, or 5th Edition 1701.

Modern Practice of the Court of Exchequer. 1731.

N.

*N. N.**Nom. or Bl. or Bl. Nom. }
or Blo. Nom.*

Uncertain what Book this refers to.

Blount's Law Dictionary.

O.

*Off. Br.**Off. Exr.**Ord. Cla.**Ord. and Rules in Exch.*

Officina Brevium.

Wentworth's Office of an Executor. Edition 1689.

Lord Clarendon and Sir Harbottle Grimstone's Orders of the Court of Chancery.

Orders and Rules of the Court of Exchequer. Edit. 1729.

P.

*P. W.**Perk.**Pl. or Ple. or Pl. Com.*

Peere Williams's Reports.

Perkins's profitable Book treating of the Laws of England.

Plowden's Commentaries.

<i>Post and Ante.</i>	References to Divisions and Subdivisions of the same Title.
<i>Pr. Cb.</i>	Precedents in Chancery.
<i>Pr. Lond. or Priv. Lond.</i>	Privilegia Londini. 1st Edition.
<i>Pr. R. or Pr. Reg.</i> or <i>Sti. Pr. Reg.</i>	} Style's Practical Register. 2d Edition.
<i>Pr. St.</i>	
<i>Pref. Cot. Abr.</i>	Private Statute. The Preface to Sir Robert Cotton's Abridgment of the Records.
<i>Q.</i> <i>Quo W. or Quo Warr.</i>	The Case of the <i>Quo Warranto</i> against the City of London.
<i>R.</i>	Resolved.
<i>Rast. Ab.</i>	Rastal's Great Abridgment of the Statutes.
<i>Rast. Ent.</i>	Rastal's Entries.
<i>Reg.</i>	Registrum Brevium.
<i>Reg. Jud.</i>	Registrum Judiciale.
<i>Reg. Or.</i>	Registrum Brevium Originalium.
<i>Reg. Pl.</i>	Regula Placitandi.
<i>Rob. Ent.</i>	Robinson's Entries.
<i>Roll. with l. or a Letter,</i> as <i>A.</i>	} Roll's Abridgment; <i>l.</i> for Line; Letter for Division.
<i>Roll. without l. or Letter.</i>	
<i>Rules and Orders B. R.</i>	Roll's Reports.
<i>Rules and Orders C. B.</i>	Rules and Orders of the Court of King's Bench. Edit. 1729.
<i>Rules and Orders of the</i> <i>Court of Chancery.</i>	Rules and Orders of the Court of Common Pleas. Edit. 1729 or 1735.
<i>Rush. or Rushw.</i>	Edit. 1739.
<i>Ry. F.</i>	Rushworth's Collections. Edit. 1659 or 1680. Rymer's Fœdera.
<i>S.</i>	Saunders's Reports.
<i>Sand.</i>	Saunders's Observations on the <i>St. 22 Car. 2. 1.</i> to suppress Conventicles.
<i>Sand. Obs. on St. 22 Car. 2.</i>	Selden. Edit. 1726.
<i>Seld.</i>	Selden's History of Tithes. 4to. 1618.
<i>Seld. de Dec.</i>	Selden's Judicature of Parliament. The Reference to the 3d Vol. is of the Folio Edit. of Selden's Works 1726, in three Volumes, usually bound in six.
<i>Seld. J. P. or Jud. Parl.</i>	Selden's Discourse on the Office of Chancellor. Edit. 1726.
<i>Seld Off. Ch. or, Canc.</i> or <i>Chan.</i>	} Selden's Mare Clausum.
<i>Seld. Mare Cl.</i>	
<i>Semb.</i>	Semble; Seems.
<i>Sb. Acc.</i>	Sir Matthew Hale's Treatise of Sheriff's Accounts. Edit. 1683.
<i>Som.</i>	Somner of Gavelkind.
<i>Ld. Som. Arg.</i>	Lord Somers's Argument on the Banker's Case.
<i>Spel. Gloss. or Sp. Gloss.</i>	Spelman's Glossary. 1st Edition 1626.
<i>St. Eccl. Cases.</i>	Stillingfleet's Ecclesiastical Cases.
<i>St. or St. P. C. or Sta.</i> or <i>Sta. P. C. or Stamf.</i> <i>P. C.</i>	} Staundford's Pleas of the Crown.
<i>St. Præ. R. or St. Pr.</i>	
	Staundford's Prærogativa Regis.

Sti.
Sti. Pr. Reg.
Supra and Infra.

Style's Reports.
 Style's Practical Register. 2d Edit.
 References to the same Division.

T.
Temp. G. 2.

Reports of Cases in Chancery and the King's Bench
 in the 4th, 5th, 6th and 7th Years of King
Geo. 2d.

Tb. Br.
Tb. D. or Tb. Dig.
Tbo. or Tbo. Ent.
Tot.

Theaurus Brevium.
 Theloall's Digest.
 Thompson's Entries.
 Tothill's Transactions of the High Court of Chan-
 cery. Edit. 1671.

Townsf.^d J. or Townsf.^d }
Jud. or T. Jud.
Tr. Eq.
1 Tr.

Townsend's 2d Book of Judgments.
 Treatise of Equity.
 State Trials compared with 2d Edit. 1730.

V.
Vad. M. or Bro. V. M.
Vid. Ent.
Vid. Introd. or Vid. Int.

Brown's Vade Mecum.
 Vidian's Entries.
 Vidian's Introduction to his Book of Entries.

W.
W. 1.—W. 2.
Wat.
Went. Off. Exr.

The Statutes of Westminster, 1st and 2d.
 Waton's Clergyman's Law. 8vo.
 Wentworth's Office of an Executor. Edition
 1689.

West. or West. Chan. or }
West. Symb.
Winch.
Win. Ent.
Wri. Int.

West's Symbolcography of the Chancery, &c.
 Winch's Reports.
 Winch's Entries. Edit. 1680.
 Wright's Introduction to the Law of Tenures.

Y.
Year Books.

Compare with the Edition of 1679, 1680.

When the Page of a Book is included in a Parenthesis, thus, (466), that
 Page is twice numbred in the Book cited.
 Quotations not above specified are such as are conceived to be obvious,
 and the References are, in general, to the common Editions of the
 Books.



JUSTICES.

(A) The Fountain of Jurisdiction.

THE King is the Fountain of Justice *Vide Courts, (A.)—Officer, (A. 1.)*
—*Prærogative, (D. 37.)*

(B) Justices cannot make a Deputy.

A Judicial Officer cannot make a Deputy. *Vide Officer, (D. 2.)*

(C.) Justices how created.

(C. 1.) By Writ, &c.

BY Authority of Parliament, tho' not extant, the Chief Justice of England *Vide Officer, (A. 1.)*
(who was before created by Patent) shall be created, and since the 25 Ed. 1.
hath been always created, by Writ. *4 Inst. 75. 2 Inst. 26.*

The other Judges are made by Patent. *Cro. Car. 1.*

And if upon the Demise of the King there be a Proclamation, that all Judges
retain their Authority, it is not safe to intermeddle till the Patent renewed. *Cro.*
*Car. 1. **

So the Chancellor, or Lord Keeper, shall be made by Delivery of the King's Seal
and taking his Oath. *4 Inst. 87. Vide Chancery; (B. 1. 2.)*

(C. 2.) By Commission.

What Commissions the King may grant, *Vide in Prærogative, (D. 29.) Vide. Post*
(G. 1, &c.)—Justices of Peace. (A. 6.)

The Commission determines by the Death of the King. *Cro. Car. 98.*

Yet the Proceeding of Justices after the Death of the King, till Notice of it,
will be good. *R. Cro. Car. 98.*

The Manner of Creation of antient Offices cannot be altered without Authority
of Parliament: As if the Creation used to be by Patent, it cannot now be by Writ.
4 Inst. 75.

If it used to be granted during Pleasure, it cannot be granted for Life. *4 Inst. 87.*

[By Stat. 1 Geo. 3. c. 23. Judges Commissioners continue during good Beha-
viour, notwithstanding the Demise of the King; but they may be removed on
Address of both Houses of Parliament; and their Salaries shall be paid as long as
their Commissions continue; on Demise of the Crown, they shall be paid out
of the Duties granted for the Civil List till further Provision, and then out of the
Monies applicable to such Uses.]

[*Vide the
St. 1 Geo. 3.
23. whereby
the Commis-
sions of
Judges are
continued,
notwithstand-
ing the De-
mise of the
King]

J U S T I C E S.

(D) Precedence of Justices.

IF a Justice be removed from one Bench to the other, he shall have Precedence according to his Seniority.

So, if a Baron of the *Exchequer* be removed to C. B. or B. R. 1 *Sid.* 408.

As to Justices of B. R. C. B. *Exchequer*, and several other Courts. *Vide Courts.*

As to Justices of Assise, *Vide Assise*, (B. 21, &c.)

As to Justices of Peace, *Vide Justices of Peace.*

(E.) Justices in Eyre:

(E. 1.) How constituted.

JUSTICES in Eyre were constituted 22 H. 2. *Hist. de C. L.* 141. 23 H. 2. *Dugd. Or.* 7. 51. *Vide Mad.* 84.

Or rather had new Circuits appointed; for there were Justices in Eyre 20 H. 2. and before. *Mad.* 84. &c. 96.

Justices in Eyre were constituted by a Writ in Nature of a Commission. 4 *Inst.* 184.

And now by the St. 27 H. 8. 24. they must be by Letters Patent under the Great Seal. 4 *Inst.* 184.

(E. 2.) Their Authority.

Justices in Eyre had Jurisdiction of all Pleas of the Crown. 4 *Inst.* 184.

And of all Actions Real, Personal, and Mixt. 4 *Inst.* 184.

Of Claims of all Franchises, and Liberties. 4 *Inst.* 184.

In every County where Justices in Eyre came, the Authority of every other Court in the same County ceased during the Eyre. 4 *Inst.* 184, 185.

So the Court of C. B. and every other Court, except B. R. 4 *Inst.* 185.

And justices in Eyre might proceed upon all Pleas depending before others. 4 *Inst.* 184.

If Judgment was given in C. B. &c. the Justices in Eyre might award Execution without a *Scire facias*. 4 *Inst.* 184.

And a Writ was usually directed to the Justices of C. B. &c. to send all Pleas in the same County before them to be there determined. 4 *Inst.* 184. *Lit. S.* 514.

So all Actions, not determined during the Eyre, were adjourned to C. B. *Co. L.* 294. a.

(E. 3.) And Court.

The Court before the Justices in Eyre had the following Stile; *Placita de Jurat' Affis & Coron' de Itinere A. & Sociorum Justic' Itinerant' apud O. in Com' R. tali die, &c.* 4 *Inst.* 184.

And was held from 7 Years to 7 Years. 4 *Inst.* 184.

But by the Increase of the Authority of Justices of Assise, the Authority of Justices in Eyre ceased. *Co. L.* 293. b.

(F) Justices in Eyre of the Forest.

Vid. Chafe,
(Q. 1. -- R. 1.)

BUT Justices in Eyre of the Forest now continue according to the original Institution. 4 *Inst.* 184.

The King by his Commission constitutes a Chief Justice of the Forest *citra Trentam*, and another to be Chief Justice in Eyre of the Forest *ultra Trentam*. 4 *Inst.* 291, 315.

And

And the King may associate others to him by a Patent *Si non omnes* and a Writ de *Admittas*. 4 *Inst.* 315.

And the Chief Justice, and others associated with him, may determine *omnia Placita Forestæ*. 4 *Inst.* 291. 315.

And by *Cb. de For.* 16. *Nullus Constabularius, &c. teneat Placita Forestæ*; and therefore, the Chief Justice in *Eyre* and the others associated to him must, and no other can determine all Offences done within the Forest, according to the Laws of the Forest. *Manw.*^d 489, 491. 4 *Inst.* 291.

And the Claims of all Liberties and Franchises within the Forest; As, to have a Park, Warren, Leet, &c. to be quit of Assarts, Purprestures, &c. *Manw.*^d 488. 4 *Inst.* 291.

And if a Thing which was done within the Forest be before other Justices, it may be pleaded to the Jurisdiction. *Manw.*^d 491.

If a Justice in *Eyre* holds his Justice-Seat, he ought to make a Precept to the Sheriff, for a general Summons of all Persons, who ought to appear there, and for making Proclamation of the Session, returnable forty Day afterwards. *Manw.*^d 492, 493. 4 *Inst.* 291.

And another Summons to the Warden of the Forest to summon all the Officers of the Forest, and all those that claim Liberties or Franchises there. *Manw.*^d 493. 4 *Inst.* 291.

Before the *St. de Cb. de Foresta*, All Earls, Barons, and others, in the County where the Forest is, ought to appear at the general Summons; But by that *St. c. 2. Homines qui manent extra Forestam non veniant de cætero*. *Manw.*^d 495.

And therefore, all out of the Forest, if they have no Suit or Claim, nor are Pledges for others, need not appear. *Manw.*^d 495, 496.

Or if they have no Lands, nor are Officers there. *Manw.*^d 497.

So Barons of the Realm, Persons Spiritual, Women, Servants, Infants under Twelve, Sick Men, or Men above Seventy, need not appear upon the general Summons, tho' they are within the Forest, if they have no Claim, and their Free Tenants appear. *Manw.*^d 498. *Cont. Jon.* 278.

So a Man may make a Claim, or traverse an Indictment against him by Attorney. *Manw.*^d 500.

So, if an Officer make a Deputy, he may appear by his Deputy. *Jon.* 278.

If an Officer of the Forest does not appear; his Office shall be seised for the King. *Jon.* 266. *Manw.*^d 497.

So, if he does not bring in his Rolls. *Manw.*^d 506.

So if a Free Tenant within the Forest does not appear, his Land shall be seised into the King's Hands. *Manw.*^d 500.

If four Men and the Reeve of any Town do not appear, the whole Town shall be amerced; but for a Default afterwards every one shall answer for himself. *Jon.* 279.

Every Forester upon his Appearance delivers his Horn upon his Knees to the Justice in *Eyre*, and pays 6s. 8d. for the Re-delivery; and every Woodward delivers his Hatchet. *Jon.* 266.

(G) Justices of Oyer and Terminer.

(G. 1.) How appointed.

JUSTICES of Oyer and Terminer are by a general Commission, or assigned for a special Purpose. 2 *Inst.* 419. 4 *Inst.* 162. *Vide Ante*, (C. 2.)—*Prærogative*, (D. 28, 29.)

And ought to be appointed by Commission, and not by Writ. 4 *Inst.* 164. *H. P. C.* 161.)

And the Commission ought to be in *Latin*, not in *English*. *R.* 12 *Co.* 31.

And ought to contain the Offences within the Commission itself, and not in a Schedule annex't. *R.* 12 *Co.* 31.

But others may be joined by a Writ of Association, Admittance, and *Si non omnes*. *F. N. B.* 111. *B.* 4 *Inst.* 165. *H. P. C.* 161. *Vide Affise*, (B. 22.)

And

J U S T I C E S.

And if any of the Commissioners or Associates die, there may be another Writ of Association for others. *F. N. B. 111. D.*

(G. 2.) Who shall be.

By the *St. 34 Ed. 3. 1.* Justices of Oyer and Terminer ought to be named by the Court, and not by the Party.

And by the *St. 2 Ed. 3. 2.* and *W. 2. 29.* they shall be Justices of the one Bench, or the other, or Justices Errant.

And therefore, Justices of Assize are usually provided with a general Commission of Oyer and Terminer.

But Justices of Peace, tho' by the *St. 18 Ed. 3. 2.* *34 Ed. 3. 1.* and *17 R. 2. 10.* they have Power to hear and determine, are not intended by a Statute which gives Authority to Justices of Oyer and Terminer. *2 Rol. 96. l. 25. H. P. C. 165.*

[By *12 G. 2. c. 27.* any Person appointed may act as Justice of Oyer and Terminer, or Gaol Delivery, in his own County, notwithstanding *St. 8 R. 2.* and *33 H. 8.*]

(G. 3.) In what Cases.

By the *St. W. 2. 29.* and *2 Ed. 3. 2.* Commissions of Oyer and Terminer for grievous Trespasses ought to be of the King's Special Grace. *4 Inst. 163. Reg. 123.*

And the general Commission is, for all Treasons, Felonies, Riots, Trespasses, and other Offences. *2 Inst. 419.*

And regularly, it shall be granted, when a great Assembly, Insurrection, or a heinous Trespass is committed. *F. N. B. 110. B.*

So it may be granted for a special Purpose; As, upon a Rescous made upon the King's Bailiff. *F. N. B. 112. A.*

Upon a Seizure of Goods for Wreck by Malefactors, which are not Wreck. *F. N. B. 112. C. 4 Inst. 163. Reg. 126.*

Upon Extortions, or Oppressions by Under Sheriffs, Bailiffs, or other Officers. *F. N. B. 112. D. 4 Inst. 163. Reg. 126.*

Hunting in the Parks of a Bishop in Time of Vacation. *F. N. B. 112. G. Reg. 125, 7.*

Defaults in Sewers or Walls against the Sea. *F. N. B. 113. A. Reg. 127.*

Collecting of Toll, &c. by Misdoers, when due to a Corporation. *F. N. B. 114. C. 119. F.*

Cutting down Trees. *4 Inst. 163.*

But it ought not to be granted in Cases not usual, or allowed by Parliament. *4 Inst. 163. Vide Prærogative, (D. 29.)*

And it may be superseded, *quia non enormis.* *2 Inst. 419, 420. 4 Inst. 163.*

Though it may be afterwards revived by *Procedendo*, if it appears to be *enormis*, *4 Inst. 163.*

(G. 4.) Their Authority.

Justices of Oyer and Terminer have Authority of all Offences within their Commission.

Or, which by Statute are to be determined in any Court of Record, or the King's Courts of Record. *4 Inst. 164. 2. H. P. C. 161.*

Or, which are prohibited by Statute, but nothing said, in what court to be punished. *Dal. 24. 4 Inst. 164.*

They may determine the same Day in which the Inquiry is taken. *4 Inst. 164.*

And they ought to send a Precept to the Sheriff for a Jury, under Hand and Seal. *4 Inst. 164.*

But Commissioners of Oyer and Terminer cannot proceed upon an Indictment not taken before themselves. *4 Inst. 164.*

So they cannot assign a Coroner to an Approver. *4 Inst. 165.*

So the Commission of Oyer and Terminer will be determined, if there be no Adjournment. *4 Inst. 165.*

J U S T I C E S.

So, if a New Commission be granted and shewn to them. 4 Inst. 165.
Or a New Commission be proclaimed, or the Sessions held by it. 4 Inst. 165.
But by the St. 1 Ed. 6. 7. The Commission shall not be determined by making or publishing a new Commission or Association, or altering the Names of any of the Justices or Commissioners. 4 Inst. 165.

(H.) Justices of Gaol-Delivery.

BY the St. 27 Ed. 1. *de Finibus levatis*, Justices of Assize shall deliver the Gaols of all Prisoners, within Liberties, or without.

And by the St. 4 Ed. 3. c. 2. Good and discreet Persons shall be assigned to deliver Gaols thrice a year, or oftner if need be.

And therefore, Justices of Assize have usually a Commission *ad Gaolas in Com' A. de Prisoner' in ea existen' hac vice deliberand'*. 4 Inst. 168.

And by some, they may do it *virtute Officii*, without Commission. H. P. C. 164.

So others may be associated to them by Writ of Association, and Admittance. 4 Inst. 169.

Or, they may be enabled by a Writ *Si non omnes*, &c. to act, tho' some be absent. 4 Inst. 169.

But if there be a Charter to Bailiffs and Recorder, *cum aliis quos* the King shall appoint, to deliver the Gaol, &c. it will be void; for they can act only with others who cannot act but by Commission, and so their Authority is founded upon the Commission, and the Charter is void, for the King was deceived. R. 1 And. 296.

(I.) The Duty of Judges.

(I. 1.) They ought to do Justice according to Law.

A Judge ought to act conformably to Law, and not according to Discretion.
By the St. 20. Ed. 3. 1. All our Justices we command to do equal Right and Law to all our Subjects Rich and Poor, without Regard to any Person, or for Letter or Command from us, or any other, or for any other Cause.

By the *same Statute*, Justices shall be sworn to take no Fee, Gift, Reward, &c. to give no Counsel, &c. *Vide Officer*, (I.)

Tho' there be a Letter from the King, no Regard shall be had to it. Hob. 16.

[If a cause has been argued, and stands over on an *ulterius concilium*, and a new Judge is made since the former Argument, it must be argued by new Counsel; if it stands over for the opinion of the court, and is argued again only for the Information of the new Judge, it may be argued for the former Counsel. *West v. Morris*, M. 11 G. 2. Andr. 31.]

(I. 2.) Ought to do it without Delay.

By the St. 20 Ed. 3. 2. We have charged the Barons of the *Exchequer* that they do Right to all our Subjects Great and Small, without Delay, &c.

(I. 3.) Shall not be Judge, and Party.

But none can be a Judge in his own Cause.

If there be an Action in the Court of Mayor and Alderman upon a By-Law, where the Penalty is given to the Mayor, it is Error. R. 1. Sal. 398. *Vide Courts*. (P. 16.)

Tho' the Court be held by the Recorder, and the Mayor is absent; for it is the Court of the Mayor and Aldermen, and the Recorder acts for him. R. 1 Sal. 398:

So, if the Chief Justice of C. B. sues there before himself, & *Sociis suis*. 1 Sal. 398.

So a Judge of C. B. cannot take a Fine from himself. 1 Sal. 398.

So a Justice of Peace being concerned, an Order at the Sessions before him, & *aliis Sociis suis*, is bad. R Sal. 607.

So, if any Judge has an Interest, he or his Deputy cannot hear the Cause, or sit in Court; and if he does in *Chester*, &c. a Prohibition goes. *R Hard. 503.*

So, if *A.* sues an Affise before *M.* and *W.* Justices of Affise, and *M.* dies, and by Writ of Association *A.* is associated with *W.* to be Judge of Affise; the Suit by *A.* shall cease, for he cannot be Judge in his own Cause, and *W.* cannot proceed without him. *R. 45 Aff 3. 8 H. 6. 20.*

Yet a Judge of a Court may sue before the other Judges of the same Court, if the Court can be held without him: As, the Chief Justice of *C. B.* may sue there, if the Entry be, *coram J. Blencowe*, &c. *1 Sal. 398.*

So, an Alderman in the Court of Aldermen in *London*, by Custom. *R. Sal. 425. 2 Lev. 200.*

So in an Action by *A.* who is Mayor, &c. before himself, it is no Error, if he does not appear by the Record to be Mayor. *2 Rol. 93. l. 27. 1 Sal. 398.*

(K.) High Treason; What shall be.

(K. 1.) If one compass the Death of the King, Queen, or their eldest Son.

(K. 1.)
What shall be
a Compassing.

HIGH Treason is the greatest and most heinous Offence against the King. *St. P. C. 1.*

By the Common Law, divers Offences were Treason, which now are not.

But by the *St. 25 Ed. 3. 2. Pur ceo que divers Opinions ont estre en que Case doit estre dit Treason, en que nemy, le Royal Request des Seigniors et Commons ad fait Declarisment que ensuist. (Vide 3 Inst. 1.)*

(1.) By this Statute it shall be High Treason, *Si Home fait compasser ou imaginer la mort no'stre Seignior le Roy, Madame sa Compaigne, ou de leur Fitz eigne et Heire, et de ceo probablement soit attainit de overt Faet per Gentz de son Condition.*

And therefore, in every Indictment for compassing the Death of the King, &c. besides the Compassing, an Overt Act must be alledged, and proved. *H. P. C. 13.*

And several Overt Acts may be alledged of the same Species of Treason in the same Indictment. *Kelk. 8.*

[If divers Overt Acts are laid, and but one proved, it is sufficient; and where divers are laid, and some are defective in Form, the Indictment shall not be quashed for that. *Foster 194.*]

But by the *St. 7 W. 3. 3.* No Evidence shall be admitted of any Overt Act not expressly laid in the Indictment.

[An Offence which falls within one Branch of Treason, may nevertheless be an Overt Act of a different Species of Treason; thus *levying War*, conspiring to levy War to dethrone, imprison, &c. remove evil Counsellors, or *adbering*, or sending Money or Intelligence, though intercepted, are Overt-Acts of *Compassing*. *Harding's Case, Lord Preston's Case, Foster 197, 210, Gregg's Case. Hensley's Case. Foster 218. 1 B. M. 642.*]

An Overt Act for Compassing the Death of the King may be, that he actually killed the King. *Kelk. 8.*

Or, was instrumental to his Murder. *Kelk. 8, 10.*

That he knowing of a Design to kill the King (tho' his Death does not follow) does an Act which shews his Approbation. *Kelk.*

Or, of a Design to depose the King; for that is the same with conspiring his Death. *H. P. C. 11. Dy. 298. b. 3 Inst. 6, 12.*

Or, to imprison him. *H. P. C. 11. 3 Inst. 6, 12.*

Or, to get him within his Power. *H. P. C. 13. 3 Inst. 6, 12.*

As, if he levy War for such Purpose. *H. P. C. 13.*

Or, assemble People. *H. P. C. 13. 3 Inst. 12.*

So, if he prepare Weapons for such Purpose. *H. P. C. 13.*

Or, write a Letter to second the Design. *H. P. C. 13.*

Or, write a Letter to incite a foreign Prince to an Invasion. *H. P. C. 13. 3 Inst. 14.*

[Going

[Going into a foreign Country, or purposing to go thither, *and taking any steps in order thereto*, to concert Measures in order to an Invasion, is Overt-Act. *Lord Preston's Case*, 4 St. Tri. *Foster* 196.]

[Inciting Foreigners who are not at War with us to invade, falls under no Branch of Treason but this only. *Foster* 197. *Hensley's Case*, 1 B. M. 642.]

Or, declare his Design by Writing. *H. P. C.* 13. *Vide Kelt.* 23. 3 *Inst.* 14.

[Writings published are Overt Acts. *Foster* 198.]

[Writings not published, but found in a Man's Closet, if plainly relative to other treasonable Practices charged in the Indictment, are Overt Acts; so *Algernon Sydney's* would have been, were they capable of such Connexion. So *Lord Preston's*, *Gregg's*, *Laver's*, Dr. *Hensley's* were. *Ibid.*]

So, if he declare his Design by express Words; for that, which plainly shews the Imagination of the Heart to put the King to death, is sufficient. *R Kelt.* 13. *Cont.* 3 *Inst.* 14. *H. P. C.* 13. *Acc. St. P. C.* 2. b.

[Words of Advice or Persuasion, uttered in Contemplation of a traiterous Design on Foot or intended, are Overt Acts; but loose words not relative to any act or design, are not. *Foster* 200.]

So a Consultation and advising together of the Means to do it, will be an Overt Act. *Kelt.* 15, 17, 20.

So, if a Man, knowing of the Design, meets at the Consultations several Times, tho' he does or says nothing; for the Meeting shews his Approbation. *R Kelt.* 17, 21.

Or, knowing of the Design, afterwards meets at a Consultation. *Kelt.* 17.

[But once meeting Conspirators on an indifferent Occasion, and *concealing*, and *not assenting*, is not an Overt-Act but only Misprision. *Foster* 194.]

So, if a Soldier does an Overt Act of Treason by Command of a Superior Officer, it will be Treason: because, the Command being traiterous, the Obedience will be so; for all are Principals. *Kelt.* 13.

If a Councillor read a Paper written for his Instruction, (knowing the Contents,) for promoting the traiterous Design. *Kelt.* 12.

But a Conspiracy to levy War is not High Treason, nor an Overt Act, or Compassing the Death of the King, if nothing be done in Pursuance of it; for it is a Species of another Treason. *H. P. C.* 13.

[So a bare Conspiracy to effect a Rising to throw down *all* Inclosures, alter Law or Religion, enhance Price of *all* Labour, open *all* Prisons, pull down *all* Meeting-Houses, is not Overt Act of Compassing. *Foster* 213.]

So a Calculation of the King's Nativity is not an Overt Act of Compassing his Death. *H. P. C.* 11.

So killing the King by Accident, as by an Arrow against a Deer, is not Treason; for he did not compass it. 3 *Inst.* 6.

Or, by a Lunatick, &c. for he cannot compass. 3 *Inst.* 4, 6.

[Overt Acts required by the Statute, are not to be considered merely as Evidence to discover the Intention, but as *Means* made use of to effectuate it. *Foster* 203.]

The King before his Coronation is within the *St. 25 Ed.* 3. 2. *H. P. C.* 11.

So, a King *de Facto*, tho' he be not *de Jure*. *H. P. C.* 12. 3 *Inst.* 7.

Tho' the rightful King be afterwards restored. *H. P. C.* 12. 3 *Inst.* 7.

So, the Queen Regnant. *H. P. C.* 12. 3 *Inst.* 7.

But a King in Title only is not within the Statute; as, the Consort of the Queen Regnant. *H. P. C.* 12. 3 *Inst.* 7.

Nor a King *de Jure*, who has not Possession. *H. P. C.* 12. 3 *Inst.* 7.

Nor a Vice-Roy, Ambassador, &c. 3 *Inst.* 8.

Yet a King driven and kept out of Possession by Rebels is a King *de Facto & Jure*, and within the Statute; as, King *Charles 2d ab anno 1648 ad 1660*. *R. Kelt.* 15.

So a Queen Consort is within the *St. 25 Ed.* 3. 3 *Inst.* 8.

But not a Queen Dowager. *H. P. C.* 12. 3 *Inst.* 8.

So the 2d or 3d Son, when he becomes Heir Apparent, is the Eldest Son within the *St. 25 Ed.* 3. *H. P. C.* 12. 3 *Inst.* 8.

So, the eldest Son of a Queen Regnant. *H. P. C.* 12. 3 *Inst.* 8.

But

(K. 2.)
Who shall be
King, &c.

But the Heir Presumptive is not within the Statute; as, the Brother of a King, who has no Son, or Issue. *H. P. C. 12.*

As, *Roger Mortimer 11 R. 2. The Duke of York 39 H. 6. H. P. C. 12. 3 Inst. 9.*

(K. 3.) If he violate the King's Companion, his eldest Daughter unmarried, or the Wife of his eldest Son.

So, by the *St. 25 Ed. 3.* it shall be High Treason, (2.) *Si Home violast la Compaigne le Roy, ou leign File le Roy, nient marrie, ou la Compaigne leigne Fitz et Heire le Roy.*

And there must be an Overt Act of this Offence. *H. P. C. 16.*

There must be manifest Proof, not conjectural. *H. P. C. 16.*

And if the Wife of the King, or of the Prince consent, it will be Treason in her also. *H. P. C. 16. 3 Inst. 9.*

And every Daughter of the King, who is eldest at the Time, is within the Statute. *H. P. C. 16. 3 Inst. 9.*

But a Queen Dowager is not within the statute. *H. P. C. 16. 3 Inst. 9.*

(K. 4.) If he levy War.

So, by the *St. 25 Ed. 3. 2.* It shall be High Treason, (3.) *Si Home leve Guerre encounter nostre Seignior le Roy en son Realme.*

A Man levies War, if he be in actual Arms against the King.

If a Man, being in Arms with divers armed Persons in his house, upon a Message from the King by any of his Council, commanding that he disperse those whom he has in Arms with him, and come to the King, refuses, and afterwards continues in Arms with armed Persons in his House. *E. of Essex. R. Mo. 621.*

If he goes with a Troop of Officers and others from his House to a City, and asks their Assistance, &c. *R. Mo. 621.*

If he maintains a Fort or Castle against the King's Forces. *H. P. C. 14. 3 Inst. 10.*

[Holding a Castle against the King's Forces by actual Force, is levying War; not the bare Detainer, by shutting the Gates. *Foster 219.*]

[If it is done in Confederacy with Rebels, or if it is delivered up to them by Treachery, or in Combination, (not if thro' Cowardice or Imprudence,) it is. *Ibid.*]

[It is not necessary to a levying War, that there be the Appearance of an Army formed under Leaders, or provided with Military Weapons, or Drums, Colours, &c. *Foster 208. Damaree and Purchaser's Case, 8 State Trials 218.*

[Listing and Marching are sufficient Overt-Acts, without Battle. *Foster 218.*]

And it will be Treason, if War be levied in any Respect against the King.

As, if it be intended to restrain the King within his House. *Mo. 621.*

To compel the King to remove any of his Servants, tho' no Damage is intended to his Person. *Mo. 621.*

So, if it be intended to make a publick Reformation, and an actual Force is employed for it: As, to make a Change of Religion. *H. P. C. 14. 3 Inst. 9.* for it is assuming a Royal Authority

To impugn or change the Laws or Statutes. *3 Inst. 9.*

To remove a Counsellor, or other Magistrate. *R. Popb. 122. 3 Inst. 9.*

[Rising in a warlike Manner to pull down a Privy-Counsellor's House, and kill him, for the Measures the King is taking by his Advice, is levying War. *Benstead's Case 1640. Foster 211.*]

To expulse all Strangers *3 Inst. 9.*

To throw down Inclosures throughout the whole Country. *H. P. C. 14. R. Popb. 122. 3 Inst. 9.*

To pull down Bawdy-houses. *Kelk. 65. 1 Sid. 358.*

[So to pull down all Meeting-houses. *Damaree's Case, 8 State Trials, 218. Foster 213.*]

[Tho' a Man is not concerned in the original Design, not present at pulling any down, only present at burning the Materials of one, inciting the Rabble to resist the Guards, and attacking them. *Purchase's Case, State Trials 218. Foster 218.*]

To open all Prisons. *Kek. 75. 3 Inst. 9.*

To enhance the Wages of Labourers. *H. P. C. 14. 3 Inst. 10.*

If War be actually levied, all assisting in Arms are Traitors.

Though they do not know the Intent. *R. Mo. 621.*

Or mistake the Intent. *R. Mo. 621.*

So, all Conspirators, tho' they are not in Arms, if others of their Conspiracy are.

H. P. C. 13, 14. 3 Inst. 9. R. Kek. 19.

[Furnishing Rebels or Enemies with Money or Provisions, is Treason; unless compelled. *Foster 217.*]

But raising a Force to pull down a particular Inclosure is only a Riot. *H. P. C. 14. 3 Inst. 9.*

[So a rising of Weavers to destroy all Engine Looms, is not levying War, *Foster 210.*]

So a Conspiracy to levy War is not Treason within this Branch of the Statute, if War be not actually levied. *H. P. C. 13. 3 Inst. 9.*

So it is not Treason, if a Man join Rebels *pro timore Mortis & recessit quam cito potuit.* *H. P. C. 14. 3 Inst. 10.*

[But Fear of having Houses burnt, or Cattle destroyed, will not excuse joining Rebels or Enemies. *Mr. Groutber's Case, 1746. Foster. 217.*]

If he does not aid or assist, or use any Force, tho' he be present. *R. Kek. 79.*

So a Conspiracy to levy War in one Part of a Country, if War be levied in another Part, does not make him guilty, who does not appear privy or assenting to it. *R. Kek. 19.*

[Attacking the King's Forces, in opposition to his Authority, is levying War; but not if on a sudden Quarrel the Neighbourhood drive the Forces from their Quarters. *Foster 219.*]

(K. 5.) Or adhere to the Enemy.

So, by the *St. 25 Ed. 3. 2.* It shall be High Treason, (4.) *Si Home soit aidant as Enemies nostre dit Seignior le Roy en son Realme donnant a eux Aid ou Comfort, en son Roialme, ou per aylours, et de ceo provablement soit atteint de overt Faet.*

A Man will be adherent to the Enemy, if he gives them Aid and Comfort. *H. P. C. 14. 3 Inst. 10.*

[Furnishing them with Money or Provisions, or sending Money, Provisions, or Intelligence, tho' intercepted, is an Overt Act of adhering. *Gregg's Case, 1707. Hensley's Case 31 G. 2. Foster 217. 1 B. M. 642.*]

[The Indictment should be laid for sending a Letter from the Place where the venue is laid, to be delivered in Parts beyond the Sea to the Enemy. *Foster 218.*]

[Cruising on the King's Subjects under an Enemy's commission, is adhering, tho' no other act of Hostility laid. *Ibid.*]

[If a Subject of England makes War on the King's Allies, engaged with him against the common Enemy, it is *adhering*, tho' no act committed against the King or his Forces. *Foster 220.*

If he surrender to them one of the King's Castles for Reward. *H. P. C. 14. 3 Inst. 10.*

[Holding a Castle against the King's Forces, tho' only by bare Detainer, without Force, if in Confederacy with Enemies, or delivering it up by Treachery or in Combination, (but not if thro' Cowardice or Imprudence,) is adhering. *Foster 219.*]

[States in actual Hostility, tho' no War declared, are Enemies. The Fact, War or not, Triable by Jury. Publick Notoriety is Evidence. *Ibid.*]

Men, not Subjects, who come in an hostile Manner into the Kingdom, are Enemies. *H. P. C. 15.*

As, the Scots who invaded England in Queen Elizabeth's Time; tho' the King of Scotland, was then in Amity. *H. P. C. 15. 3 Inst. 11. 4 Inst. 152.*

And tho' it was done without his Assent. *3 Inst. 11. 4 Inst. 152.*

[If the Subject of a Foreign Prince in Amity with us invades us, without Commission from his Sovereign, or acts in a hostile Manner, under Commission from a Prince at Enmity with us, he is an Enemy. *Foster 219.*]

So every one, not within the King's Allegiance. *3 Inst. 11.*

But a Subject in Rebellion is not an Enemy; and therefore, if a Rebel flies out of the Kingdom, and *A.* knowing of his Treason succours him, he is not a Traitor within this Branch. 3 *Inst.* 11.

So if a Subject comes with the King's Enemies into the Kingdom, he is not an Enemy. 3 *Inst.* 11.

So the Prince of *Wales*, who holds of the King by Homage, &c. is not an Enemy; for he is within the Allegiance. 3 *Inst.* 11.

In all these Cases there must be an Overt Act proved. *H. P. C.* 16. 3 *Inst.* 12.

And by the *St.* 7 *W.* 3. 3. There must be Proof of the same Overt Act alledged in the Indictment.

And Proof shall be by 2 Witnesses to the same Overt Act, or to several Overt Acts of the same Treason. *Kel.* 9.

If there be at *Rome* a Conspiracy to raise a Rebellion, and some move to *England* with that Intent; it will be an Overt Act. *Sav.* 4.

[By *Stat.* 17 *Geo.* 2. c. 39. Corresponding with, or remitting Money to the Pretender's Son.]

[By *ff.* 2. The Pretender's Son landing, or attempting to land in the Dominions of the Crown of *Great Britain*.]

(K. 6.) If he counterfeit the Great, or Privy Seal.

So, by the *St.* 25 *Ed.* 3. 2. It shall be High Treason, (5.) *Si Home counterface le Grand ou Privie Seal le Roy.*

Aiders, and Consenters to counterfeit the Great, or Privy Seal, are within this Statute. *H. P. C.* 18. 3 *Inst.* 16.

By the *St.* 1 *M.* 6. To counterfeit the Sign Manual, Privy Signet or Privy Seal, is made High Treason.

But fixing the Great Seal, &c. to a false Patent is not Treason, tho it be Misprision. *H. P. C.* 18. 3 *Inst.* 15.

Nor fixing the Seal by the Chancellor, without Warrant. *H. P. C.* 18. 3 *Inst.* 15.

Nor a Conspiracy to counterfeit the Seal, if it be not counterfeited. *H. P. C.* 18. 3 *Inst.* 15.

So receiving and abetting a Counterfeit or of the Great Seal knowingly, after Fact committed, is not Treason, but Misprision only. *R.* 12 *Co.* 81.

(K. 7.) Or Money.

So, by the *St.* 25 *Ed.* 3. 2. It shall be High Treason, (6.) *Si Home counterface Money le Roy, ou apport faux Money en cest Roialme counterfait al Money d'Anglitterre sachant ceo estre faux, per merchander ou Payment faire. Vide Money.*

To counterfeit the proper Coin of the Realm is within the *St.* 25 *Ed.* 3. 2. and was also Treason by the Common Law. *H. P. C.* 19. 3 *Inst.* 16.

Tho' it be not uttered. *H. P. C.* 20. 3 *Inst.* 16.

So, to bring in, knowingly, Coin counterfeited *ad similitudinem Monetae Angliae* from a foreign Kingdom, and make Payment with it. *H. P. C.* 21. 3 *Inst.* 18.

By the *St.* 1 *M.* 6. To forge and counterfeit Gold or Silver Coin, not the proper Money of the Kingdom, if current in the Realm by Consent of the King, is High Treason. If current by Proclamation. *H. P. C.* 20.

By the *St.* 1 & 2 *Pb.* & *M.* 11. Knowingly to bring into the Realm from beyond Seas Coin counterfeit like Money current in this Realm, of Intent to utter and pay the same, is High Treason in the Importer, his Counsellors, Aiders and Abettors.

By the *St.* 5 *El.* 11. Clipping, Washing, Rounding, and Filing for Gain the Coin of this Realm, or current by Proclamation in it, is Treason in the Actors, their Counsellors, and Abettors. *Vide Post*, (X. 1.)

By the *St.* 18 *El.* 1. By any Means for Gain to impair, diminish, falsify, scale, or lighten the Coin of this Realm, or current in it by Proclamation, is Treason in Actors, Counsellors, and Abettors. *Vide Post*, (X. 1.)

By the St. 8 & 9 W. 3. 25. (made perpetual by the St. 7. Ann. 25.) No Person, unless employed in the Mint and for the Use of the Mint only, or authorized by the Treasury, shall knowingly make or mend (or begin or assist in it) any Punchion, Stamp, Dye, or Mould of Metal, Earth, or Sand, &c. whereon is impressed, or which will make or impress the Figure or Stamp of either Side of Gold or Silver Coin current, or Edging Tool or Engine not of common Use in Trade, but contrived for marking Edges of Money like the Edges of Money coined in the King's Mint. And the Offenders, their Councillors, Aiders, and Abettors shall be adjudged guilty of High Treason.

[By Stat. 15 G. 2. c. 28. To wash, gild, or colour, Shilling or Sixpence, true or counterfeit, or to add or alter any Part of Impression, to make it pass for a Guinea or Half Guinea, or to alter Halfpence or Farthings, to make them pass for Shilling or Sixpence, is High Treason.

[§. 2. Persons uttering false Money, knowingly, shall suffer Six Months Imprisonment, and give Security for two years; for second Offence two years Imprisonment, and Security for two years more; and for third Offence Felony without Clergy.]

[§. 3. Persons uttering false Money, knowingly, twice in ten days, or that shall, at the Time of uttering such false Money, have about them one Piece of counterfeit Money besides that tendered, (it does not here say knowingly,) shall be deemed a common Utterer of false Money, and suffer one Year's Imprisonment, and give Security for two Year's more; and if he afterwards tender false Money, knowingly, Felony without Clergy.]

[§. 6. Counterfeiting Halfpence or Farthings, two Year's Imprisonment, and Security for two Years more.]

[By St. 11 G. 3. c. 40. Counterfeiting Copper, or uttering it, is made Felony.]

[By Stat. 13 G. 3. c. 71. Person to whom Gold Coin is tendered, may cut it; if it shall appear diminished or counterfeit, the Person tendering shall bear the Loss, if not, the other; to be determined by Mayor or Justice.]

[By St. 14 G. 3. c. 42. Silver Coin, purporting to be of this Kingdom, shall not be brought in under Weight or Fineness; and 5*l.* thereof in a Ship, or on a Person coming from it, may be seized; if it is Weight and Fineness, it shall be restored, if not, forfeited, half to the King, half to Informer, and after Condemnation, shall be melted, cut or defaced]

[Tender in Silver above 25*l.* is good only for its Value at 5*s.* 2*d.* per Ounce.]

[Stat. 14 G. 3. c. 70. directs light Gold Coin to be cut

(K. 8.) If he kill the Chancellor, Treasurer, or King's Justices doing their Offices.

So, by the St. 25 Ed. 3. 2. It will be High Treason, (7.) *Si Home tuast Chancellor, Treasurer ou Justices nostre Seignion le Roy del un Bank ou del auter, Justices in Eyre et d'Assise et tous auters Justices assignes de Oier et Terminer esteants en leur Places fessants leur Offices.*

Wounding of the Chancellor, &c. if Death does not ensue is not within the Statute. H. P. C. 17. 3 Inst. 18.

Nor killing them, if they are not in the Exercise of their Offices. H. P. C. 17.

Nor killing any not named in the Statute; as, Lord Steward, &c. H. P. C. 17. 3 Inst. 18.

A Judge of the Admiralty, or Ecclesiastical Court. 3 Inst. 18.

Nor a Peer in Parliament, or a Member of the House of Commons, tho' killed in their Places. 3 Inst. 18.

(K. 9.) To maintain the Authority of the Pope.

By the St. 5 El. 1. If any Person, after Conviction and Attainder for the first Offence, do again by writing, teaching, &c. wittingly maintain the Authority of the Bishop of Rome, heretofore claimed in this Realm, being under the Queen's Obedience, his Abettors, &c. to further such Authority, &c. Or, if any, within 3 Months

Months after the first Tender, do a second Time refuse the Oath of Supremacy prescribed 1 *El.* 1. he shall be guilty of High Treason. *Vide Post*, (X. 1.)

So, by the *St.* 13 *El.* 2. If any use, publish, or put in Ure any Bull, &c. from Rome, or absolve or be absolved by Colour of such Bull, &c.

So, by the *St.* 23 *El.* 1. If any withdraw, &c. any from Obedience, or to that Intent to the Romish Religion, or move to be reconciled, or be reconciled to the See of Rome.

So, by the *St.* 3 *Jac.* 4. *f.* 22. If any on the Sea, beyond the Sea, or in this Realm perswade or withdraw any Subject from his natural Obedience, or reconcile him, or move him to promise Obedience to the Pope, or See of Rome, or other Prince, their Abettors, &c. Or, if any be reconciled, &c. unless he return, &c. and in 6 days submit and take the Oaths of Allegiance and Supremacy.

So, by the *St.* 27 *Eliz.* 2. If any Jesuit, Seminary Priest, or other Ecclesiastical Person, born in this Realm and professed, &c. by Authority of the See of Rome, come into or remain in this Realm, unless in 3 Days he submit and take the Oath of Supremacy and then come not within 10 miles of the Queen without Licence during 10 Years: Or, if any brought up in a Seminary, &c. do not return in 6 Months after Proclamation in London, and in two Days after Return submit, &c. and take the Oath of Supremacy.

So, if any pretends Authority to absolve or perswades a Subject from his Obedience, it will be Treason within 23 *El.* 1. tho' he does not move any to decline his Obedience. *R. Sav.* 3.

So, if he persuades any, &c. tho' he has not, nor pretends to have Power to absolve. *R. Sal.* 3.

Vide Post, (Y. 3.)

(L) Petit Treason, What.

(L. 1.) To kill a Master.

SO, by the *St.* 25 *Ed.* 3. 2. Petit Treason is, *Quant un Servant tua son Maister ou un Feme tua son Baron, ou quant Home seculer ou de Religion tua son Prelate a que il doit Foye et Obedience.*

So, if a Servant kill his Mistress. *H. P. C.* 23.

Or, his Master's Wife. *H. P. C.* 23. 3 *Inst.* 20.

Tho' the Servant be departed from his Service, but kills upon Malice there conceived. *H. P. C.* 23. 3 *Inst.* 20.

So, if a Son, who has Meat and Drink from his Father kills him; for he is a Servant. *H. P. C.* 24. 3 *Inst.* 20.

So, if a Man, by the Procurement and in the Presence of a Servant, kills the Master, it is Treason in the Servant, tho' only Murder in the other. *H. P. C.* 25. *Dy.* 128. 3 *Inst.* 20.

So, if the Man was procured only to rob the Master. *Dy.* 128.

Or, only to beat the Master, and he kills him.

But if the Master be killed by the Procurement, but in the Absence of the Servant, the Servant is only accessory to the Murder. *H. P. C.* 23, 25.

But being in the same House, tho' not in the same Room, is a Presence. *H. P. C.* 24.

If the Servant attempt to assassinate a Stranger, but by Mischance kills his Master, it is Treason; for he had a murderous Intent.

And a Circumstance, which makes a Man guilty of Murder, makes a Servant guilty of Petit Treason. *H. P. C.* 24.

But if a Servant kills his Master without Malice, it is only Manslaughter. *H. P. C.* 24.

(L. 2.) Husband.

If a Wife kill her Husband, it is Petit Treason. *H. P. C.* 23.

So, if she intend the Death of another, and the Husband is killed.

Or,

Or, if a Stranger kill the Husband by her Assistance. *H. P. C.* 23.

Or a Servant, by her Procurement, tho' she be absent. *H. P. C.* 23, 24, 25.

3 *Inst.* 20. *Dy.* 332.

If she desires her Daughter to give Powder to her Husband for his Recovery, which she does in her Absence, whereby the Husband is poisoned, *R. Kel.* 53.

But if a Stranger kill the Husband by the Procurement of the Wife who is absent, she is only accessory to the Murder. *H. P. C.* 23, 25. *Dy.* 332.

3 *Inst.* 20.

If an Husband kill his Wife, it is only Murder.

(L. 3.) Prelate.

If a Clerk Religious or Secular kill his Superior, it is Petit Treason. *H. P. C.*

24. 3 *Inst.* 20.

[It is a Species of Murder, and a Person Guilty of it may be indicted for Murder; and if Murder is excepted in a Pardon, Petit Treason is thereby excepted. *Foster* 324, 325.]

Aiders and Abettors to Petit Treason are within the *St. 25 Ed.* 3. 2. *H. P. C.*

24. 3 *Inst.* 20.

A Man for Petit Treason shall have Judgment to be drawn and hanged. *H. P. C.* 24, 268. 3 *Inst.* 211.

A Woman to be drawn and burnt. *H. P. C.* 24, 268. 3 *Inst.* 211;

Vide Pol. (Y. 4.)

(M) Felony; Homicide.

(M 1.) Murder.

QUODLIBET *Crimen Capitale felleo Animo perpetratum* is Felony. *Co. L.* 391. a. (M. 4.) By whom committed,

And antiently High Treason was pardoned by this Word, *Felony*, but not of late Times. *Co. L.* 391. a.

But Petit Treason, Homicide, Burglary, Robbery, Arson, Rape, and Larceny are now Felonies. *Co. L.* 391.

Homicide comprehends Murder, Manslaughter, Death by Chance, *Se defendendo* or for justifiable Cause.

Murder is, when a Man sane and above the Age of Discretion kills another within the Realm, on Malice prepense. *H. P. C.* 43. 3 *Inst.* 47.

If a Man upon Malice kill another it is Murder, tho' he was drunk. *H. P. C.* 43.

Tho' an Infant, if he be above the Age of Discretion.

Or under the Age of Discretion, if by Circumstances it appears that he knew what the Action was; as, by Excuses, endeavouring to conceal, &c. *H. P. C.* 43, 44.

[A Child of 10 Years of Age may be Guilty of Murder. *York's Case*, 1748. *Foster* 70.]

So, if a Man procure a Lunatick, &c. to kill *H. P. C.* 43.

Tho' a *Feme Covert*, by Coercion of her Husband. *H. P. C.* 65.

But it is not Felony in a Lunatick during his Lunacy. *H. P. C.* 43.

Nor in a *Non Compos.* *H. P. C.* 43.

Nor in an Infant, who does not know Good from Evil. *H. P. C.* 43, 44.

It is Murder, tho' the Man killed be an Alien, or Denizen. 3 *Inst.* 50.

Or, attainted of High Treason, or Felony. 3 *Inst.* 50.

Or, in a *Præmunire.* 3 *Inst.* 50.

Or, abjured.

Or, convicted and under Execution for another Crime. *R. 3 Mod.* 68.

But the Person must be *in Rerum natura*; and therefore, if a Woman *privement* enfeint by a Potion destroy the Child before it be born, it is not Murder. *H. P. C.*

53. 3 *Inst.* 50.

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Or,

(M. 2.)
Whose Death
shall be Mur-
der,

Or, if another by a Stroke given to her, destroy it. *H. P. C. 53. 3 Inst. 50.*

Yet if it be born, and afterwards die by Means of the Potion, or the Stroke, it is Murder. *H. P. C. 53. 3 Inst. 50.*

And he, who advises the Destruction before the Birth, is accessory to the Murder. *H. P. C. 53, 54. 3 Inst. 51.*

By the *St. 27 Jac. 27.* If a Woman delivered of Issue, which being born alive would be a Bastard, endeavour by burying, drowning, &c. by herself or others, so to conceal it's Death, that it may not appear, whether born alive or not, it is Murder, unless she prove by one Witness at least, that it was born dead.

The Killing must be within the Realm; for if a Man be killed in *partibus transmarinis*, it is triable by the Constable and Marshal, and not by the Common Law. *H. P. C. 54. 3 Inst. 48.*

Stroke and Death upon the High Sea shall be tried by the Admiral, or by Commission upon the *St. 28 H. 8. 13. H. P. C. 54.*

*[By the *St. 2 G. 2. 21.*

Stroke upon the Sea, and Death upon Land cannot be punished. *H. P. C. 54.**
If any Person shall be feloniously stricken or poisoned on the Sea or out of England and die in England, or be stricken or poisoned in England and die on the Sea or out of England, an Indictment, found in the County in England where such Death, Stroke, or Poisoning shall happen, shall be as good and effectual in the Law, as if such felonious Stroke and Death thereby ensuing, or Poisoning and Death thereby ensuing, had happened in that County.]

(M. 3.)
Felo de se.

If a Man being *Compos Mentis*, and of the Age of Discretion kill himself, it is Murder. *H. P. C. 28. 3 Inst. 54.*

Or, if he give himself a mortal Wound, of which he dies within a Year and a Day. *H. P. C. 28.*

Or if he pursues *B.* with Intent to kill him, *B.* runs away and falls with his Knife drawn in his Hand, the Pursuer falls on the Knife, he is *Felo de se.* *H. P. C. 28. 3 Inst. 54.*

Otherwise, if *B.* stands with a naked Weapon for his Defence, and *A.* runs upon it. *H. P. C. 29.*

(M. 4.)
What Manner of Death.

It is Murder, if a Man upon express Malice poison another. *H. P. C. 53. 3 Inst. 48.*

Or, kill him with a Sword, Gun, Bow, or any other Weapon. *H. P. C. 53. 3 Inst. 48.*

Or, crush, bruise, smother, strangle, &c. to Death. *H. P. C. 53. 3 Inst. 48.*

Or, famish. *H. P. C. 53. Inst. 48.*

Or set on a Dog to kill him. *H. P. C. 53. 3 Inst. 48.*

Or by any Means maliciously put another to Death.

Or, give him a mortal Wound, of which he dies within a Year and a Day. *H. P. C. 55. 3 Inst. 47.*

Or, maliciously does any Act, upon which Death ensues, within a Year and a Day.

As if he lay a Sick Man in the Cold. *H. P. C. 53. 3 Inst. 48.*

Or, expose an Infant till the Cold, or a Kite, &c. kill it. *H. P. C. 53.*

[If *A. B.* and *C.* in order to obtain the Reward for apprehending Highwaymen, conspire to procure *D.* to rob, which he does, and on the Evidence of *B.* and *C.* he is convicted and executed, it is not Murder. *Macdaniel Berry and Jones's Case, Foster 131.*]

(M. 5.)
What shall be
Malice pre-
pense.
Express Ma-
lice.

[*Malice afore-thought* is when the Fact is attended with such Circumstances as are the ordinary Symptoms of a wicked, depraved, malignant Spirit; or an Action flowing from a wicked and corrupt Motive; a thing done *malo animo, mala conscientia*, *Foster 25.*]

Malice which makes Killing to be Murder may be express; as, a precedent Menace.

Or, lying in wait.

Or, a precedent Quarrel. *H. P. C. 48.*

So, if two Men appoint a Time or Place of Combat and one of them is killed, it is Murder. *H. P. C. 48.*

Or, if without Appointment they meet and fight, upon Malice. *H. P. C. 47.*

Tho' he that is killed gives the first Blow. *H. P. C. 47.*

Tho'

Tho' he that kills declines the Duel, and was only persuaded to it, by Importunity, and to save his Honour. *H. P. C.* 48.

Tho' he that kills refuses to strike, but offers a Pot of Ale to the other to touch him; whereupon *B.* strikes and *A.* kills him. *H. P. C.* 48.

Tho' the Quarrel was sudden, and thereupon a Duel appointed for the next Day. *H. P. C.* 48. 3 *Inst.* 51.

Altho' he that kills, after the first stroke, flies to a Wall and then kills the other in his own Defence. *H. P. C.* 42, 47.

Or, if the Duel be fought after the Passion cools. *R. 1 Lev.* 181.

[If *A.* and *B.* play, then wrestle, then cudgel, *A.* gives *B.* a smart Stroke, *B.* grows angry, throws away his Cudgel, fight in earnest, are parted; *A.* goes away angry, and threatens to fetch something, and stick *B.*; he changes his Clothes, returns with a Sword concealed, and a Cudgel in his Hand, draws on a Discourse of the Quarrel, and offers to cudgel if *B.* will keep off his Hands; *B.* goes to him. and takes up the Cudgel which *A.* drops, and gives him two Blows on the Shoulders; *A.* draws out the concealed Sword, says, "Stand off, or I'll stab you," thrusts at, but misses him, *B.* goes back, *A.* shortens his Sword, leaps towards *B.* stabs him, and he dies; it is Murder. *Mason's Case*, 1756. *Foster* 132.]

[If *A.* and *P.* quarrel, offer to fight, are prevented, stay an Hour in Company, *E.* offers to make it up, *A.* refuses it, *B.* going away with the Rest of the Company. called back by *A.* they fight and *B.* is killed; it is Murder in *A.* though it was found that there was no Reconciliation, though *B.* gave *A.* three Wounds, and owned he received his Wounds fairly. *Rex v. Oneby* T. 13 G. On great Deliberation, by the 12 Judges unanimously. *Ld. Raym.* 1485. *Str.* 766.]

[On a Special Verdict, the Court are Judges of the Malice, and whether there was Time to cool, or the Act deliberate or not, and not the Jury. *By all the Judges Ibid.*]

So, if a Man is killed upon Malice, it is Murder, tho' the Malice did not extend to his Life, but only to a Corporal Damage. *H. P. C.* 49, 50.

As, to beat him. *H. P. C.* 49.

(M. 6.)
Tho' it does
not extend to
the Life.

So, if the Malice was against another; as, if *A.* with Malice aims at *B.* but kills *C.* *H. P. C.* 50.

If *A.* intends Poison for *B.* but by Misadventure *C.* takes it. *H. P. C.* 50.

If *A.* with Malice assaults the Master, and in the Quarrel kills the Servant. *H. P. C.* 50.

If there be a Duel upon Malice, and *C.* attempts to part them, and one of them kills him. *H. P. C.* 50. 22 *Aff.* 71.

(M. 7.)
Tho' against
a Stranger.

So, if the Malice be in another person; as if one commits Murder, all present and aiding are Guilty of Murder, tho' they had no particular Malice against the Person killed. *H. P. C.* 51.

As, if there be a Duel upon Malice between *A.* and *B.* and *C.* be Second to *A.* who kills *B.* This is Murder in *C.* *H. P. C.* 51.

(M. 8.)
Aiding one
who has Ma-
lice.

[In all possible Cases deliberate Homicide is Murder, whatever the Provocation may be. *Foster* 296.]

And in some Cases implied Malice makes the Crime Murder; for the Law presumes Malice, when a Man kills another without sufficient Provocation. *H. P. C.* 45. 3 *Inst.* 52.

As, if he kill another, who distorts his Face and ridicules him. *H. P. C.* 45. *R. Cro. El.* 778.

[If *A.* throws a Bottle at *B.* *B.* returns it and wounds *A.*; *A.* stabs *B.* it is Murder. *Mawgridge's Case*, *Foster* 296.]

Or, who provokes him only by indecent Words: As, if a Master kill his Apprentice that answers him saucily. 10th Oct. 1666. *Grey's Case*, (cited *Comyn's Reports* 15, 16.) *R. 1 Lev.* 180.

(M. 9)
Malice im-
plied.
If a Man kills
without just
Provocation.

Or,

Or, with a Sword kills a Servant that refuses his Command. *R. 8 W. 3. Keate.*
(*Reported Comyn's Reports 13.*)

Otherwise, if a Man gives his Servant proper Correction, and kills him by an unlucky Stroke; that is only Manslaughter. *Turner's Case.*

So, if a Man be cutting Wood in a Park, and the Parker ties him to an Horse and beats him, whereby the Horse runs away and kills the Man, it is Murder. *R. Cro. Car. 131. H. P. C. 49.*

So, if one strike a Child in the High Street with his Dagger, of which he dies. *Sav. 67.*

[If on sudden Affray, though no Felony, or dangerous Wound, one interpose to part the Combatants, giving notice of his Intention, and is killed, *Foster 272, 309.*]

(M. 10.)
Unlawful Act.

When a Man does an unlawful Act and Death ensues, it is Murder: As, if a Man rob an Orchard, and being rebuked by the Owner, kills him.

If a Man commits a Riot, and in the Doing of it another is killed. *H. P. C. 47.*

If Malefactors in a Park kill the Parker. *H. P. C. 46. R. Pal. 35. Sav. 67.*

Though the Parker shoots, and upon Flight pursues them, and then is killed. *H. P. C. 46. Pal. 35.*

So, if a Man assaults another to rob him, and after Resistance and Stroke, kills him. *H. P. C. 45, 46.*

And if several do an unlawful Act, and one of them kills a Man, it is Murder in all aiding the unlawful Act. *H. P. C. 51.*

And in all ready to give Aid, tho' only Lookers on. *H. P. C. 51.*

Tho' out of Sight, in another Room, or at half a Mile distant in the same Park. *H. P. C. 51.*

If A. begins a Riot, which continues for an Hour, and then B. is killed by another, it will be Murder in A. *R. 1 Sal. 334, 335.*

[To render the Killing Murder in all those who assembled to do an unlawful Act, it must appear, that it was committed in Prosecution of some unlawful Purpose: Thus, Smugglers assemble to run Wool, Officers oppose, a Smuggler fires a Gun, and kills another Smuggler; if it does not appear it was levelled at the Officers, the other Smugglers present are Not Guilty, for it does not appear it was in Prosecution of the Purpose for which they assembled. *Plummers Case, Foster 352.*]

[Three Soldiers go to rob an Orchard, two get up the Tree, the third stands at the Gate with a drawn Sword, the Owner's Son comes, seizes him, he stabs him; those in the Tree Not Guilty; otherwise, had they come with a general Resolution against all Opposers. *Per Holt. Foster 353.*]

[A general Resolution against all Opposers may be collected from their Number, Arms or Behaviour, at or before. *Ibid. Q. How the above Case is reconcileable to this Doctrine?*]

[If A. B. and C. ride out to commit a Robbery, C. turns into another Road, and joins them no more; A. and B. rob on the same day; C. is Not Guilty. *Foster 354.*]

[If Persons assemble for a lawful Act, and prosecute it lawfully; and others oppose, and one is killed; none are Guilty but those who actually aided or abetted in the Fact. *Ibid.*]

(M. 11.)
Act apparently
mischievous.

When a Man with a mischievous Intent does an Act apparently mischievous, and Death ensues, it is Murder.

As, if he ride among a Multitude with an Horse used to kicking. *H. P. C. 44.*

If he throw a Stone over an House among a Multitude to hurt them. *H. P. C. 44. 3 Inst. 57.*

If he wilfully prepare Poison, and lay it for any Person; *H. P. C. 44; By the St. 1 Ed. 6. 12. 3 Inst. 52.*

(M. 12.)
Killing an
Officer.

When an Officer is killed in the Execution of his Office, it is Murder; as a Watchman or Constable. *H. P. C. 45. Sav. 67. 3 Inst. 52.*

Serjeant,

Serjeant or Magistrate. *H. P. C.* 45. 3 *Inst.* 52. *Sav.* 67.

Or any in their Assistance. *H. P. C.* 45. 3 *Inst.* 52. *Foster* 309.

[Though it is not on the Spot, but coming or going. *Foster* 308.]

[Interposing to prevent Mischief, or endeavouring to apprehend Felons; though not present, but on Hue and Cry, or fresh Pursuit. *Foster* 309.]

[But the Officer should be known, or notify with what Intent he comes, by commanding the Peace, &c. *Foster* 310.]

Tho' he be not known to be an Officer. *H. P. C.* 45, 46.

Tho' the Process is erroneous. *H. P. C.* 46.

[In Arrests on Process, he should give notice of his Authority. *Foster* 311.]

But if the Officer does what is not warrantable, it is only Manslaughter. *H. P. C.* 46. *R. Mar.* 4.

If the Process mistakes the Name, or Addition of the Party. *Dy.* 88. *a. in Marg.* *R. Ton.* 346.

[It is sufficient, that the Process is not defective in the Frame, and issue in the ordinary Course, though there was Error in the Proceedings before; and if the Warrant is produced at the Trial, the Judgment or Decree need not. *Per Hardwicke C. J. Rogers's Case*, 1735. *Ibid.* *Vide* Forceable Entry, *D.* 18, 19.]

[If the Process is defective in the Frame, if there is a Mistake in the Name or Addition of the Person on whom it is to be executed, or if his Name or the Name of the Officer is inserted without Authority and after issuing the Process, or the Officer exceeds his Authority, and is killed, it is only Manslaughter in the Person whose Liberty is invaded. *Foster* 312.]

As to Strangers, it has been ruled, that if a Person is unlawfully deprived of his Liberty, a Stranger may attempt his Rescue, and if he kills, it is Manslaughter; for that when the Liberty of the Subject is invaded, it is a Provocation to all the Subjects of England. *Tooley's Case*, 4 *Ann.* *Sed Q.* *Foster* 312. & *seq.*

[There must have been a Felony committed, to bring a private Person within the Protection of this Law. *Foster* 318.]

[If there has been a Felony, but not by the Person pursued, and one endeavouring to arrest, kills, or is killed, it is not Murder in either Case. *Ibid.*]

[But if *A.* a Peace-officer, has a warrant to apprehend *B.* by name, for Felony, or *B.* is indicted for Felony, or the Hue and Cry raised against him by Name, and he, though innocent, flies or resists, and *A.* or any joining, is killed by *B.* or any of his Accomplices joining in that Outrage, it is Murder. *Ibid.*

When an Officer of Justice exceeds the Limits of his Jurisdiction in the Death of another, it is Murder; as, if a Justice of Peace gives Judgment for High Treason, and the Officer executes, it is Murder in both. *H. P. C.* 35.

(M. 13)
Officer exceeding his Jurisdiction.

If a Justice of Peace give Judgment of Death for a Trespass, it is Murder in him; but the Executioner is excused. *H. P. C.* 35.

If a Judge executes a Criminal; for that belongs to the Sheriff. *H. P. C.* 35, 36.

Or, if a Stranger does it of his own Head; *H. P. C.* 35, 36.

So, if a Sheriff behead a Man condemned to be hanged. *H. P. C.* 36.

[If an Officer, by Warrant from the Crown, beheads a Person under Sentence of Death for Felony, or a Woman for Treason, it is not Murder nor Criminal. (*Vide* *X. 1. 3. post*) *Foster* 269.]

If any execute Martial Law in Time of Peace. *H. P. C.* 46.

If a Gaoler by Duress kill his Prisoner. *H. P. C.* 46.

If a Gaoler carries his Prisoner, against his Will, whom he knows has never had the Small-Pox, but fears it, to a Place where he knows a Person having it is, and the Prisoner catches it and dies, it is Murder. *Castel vid. v. Bambridge*, *H.* 3 *G.* 2. *Str.* 854.]

[If a Gaoler (as Warden of the Fleet) has a lawful Deputy, whose Servant by Duress (of confining in an unwholesome Room) kills his Prisoner, it is not Murder in the Principal, though he sometimes acted as Warden, and once saw the Deceased in the unwholesome Room. *Rex v. Huggins*, *M.* 4 *G.* 2. *Str.* 882. *Ld. Raym.* 1574.

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[But

[But it is Murder in the Servant. *Ibid.*]

[If Defendant in a civil Suit, fearing Arrest, flies, Officer pursues, and in the Pursuit kills, it is Murder. *Per Hale* 481. Or Manslaughter; according to Circumstances. *Per Foster* 271.]

[So in Case of Breach of the Peace, or any Misdemeanor short of Felony. *Ibid.*]

(M. 14.)
Homicide
upon the St.
1 Jac. 8.

By the St. 1 Jac. 8. Any who stabs a Person, not having a Weapon drawn, nor first stricken, so that he die in six Months, tho' Malice aforethought cannot be proved, shall suffer as for Murder.

[A Cudgel, or other Thing proper for Defence or Annoyance in the Hand of the Party, is a Weapon drawn. *Foster* 300.]

[Not having first struck, Means not having given the first Blow; *per* 11 Judges. *Contra per Richardson* and *Holt*. It means, before the mortal Wound was given. *Foster* 301.]

But this does not extend to Persons present, who do not give the Stab. *H.P.C.* 58. *R. Al.* 44.

[Husband stabbing Adulterer is not within the Act.]

[Nor a Man assaulted by Thieves in his House.]

[Nor if an Officer pushes into a Gentleman's Chamber early to arrest him, and does not tell his Business, nor use Words of Arrest.]

[Nor if one concealed in a Closet, but no Thief, is stabbed, on a Sudden Outcry of Thieves in the Night-Time. *Foster* 298.]

Nor to a Person, who in a Passion throws a Hammer at another. *R. Jon.* 433.

[Firing, or Shooting an Arrow, or thrusting with a Staff or blunt Weapon, are within the Statute, but throwing any Weapon, not. *Foster* 300.]

Nor to those, who are not indicted upon the Statute. *H. P. C.* 58.

The Indictment need not conclude *Contra formam Statuti*. *H. P. C.* 58. *Al.* 44.

And tho' the Indictment be upon the Statute, the Jury may find Manslaughter generally. *H. P. C.* 58. *Al.* 44.

[If the Offence is barely Manslaughter at Common Law, the Prisoner is rarely convicted on the Statute. *Foster* 299.]

If the Person killed had thrown a Pot at the other, he shall be said to have had a Weapon drawn. *R. per.* 5 J. 3 *Lev.* 256.

Vide Post, (Y. 5.)

(M. 15.) Manslaughter.

(M. 15.)
If one kill
upon a rea-
sonable Pro-
vocation.

The Distinction between Murder and Manslaughter began upon the Plan of the Mosaic Law. *Eq. Ca.* 270.

And therefore, where a Man kills another upon a reasonable Provocation given, it will be only Manslaughter.

As, if a Son having been beaten complain to the Father, who goes three-quarters of a Mile, and beats the Person that misused his Son, upon which he dies. *H. P. C.* 48. *R.* 12 Co. 87.

If a Servant, seeing his Master assaulted, kills the Assailant. *H. P. C.* 51, 2.

If a Stranger seeing two Men fighting, helps one and kills the other. *H. P. C.* 52. *R.* 1 Sid. 160. 12 Co. 87.

If a Man sees another taken by a Prest Master, who upon Demand refuses to shew his Warrant, and for this he kills the Prest Master. *R. per* 8 J.

If a Collector of Tallage makes a Distress, and, being resisted, kills. *R.* 1 Vent. 216.

If a Man sees his Wife in Adultery, and kills the Adulterer. *R.* 1 Vent. 158.

If a Man kills an Officer who arrests him without Warrant.

Or, who exceeds his Warrant; as, if he break an House to make an Arrest. *H. P. C.* 46.

If a Man kills another, who attempts to enter into his House upon Pretence of a Title. *H. P. C.* 40, 57.

Or, to recover a Possession gained by Force. *H. P. C.* 40, 56.

[If

[If a Traveller, before he lights from his Chaise, fires his Pistols, and kills one by Accident, it is Manslaughter. *Rex v. Burton, M. 8 G. Str. 481.*]

[Two Bailiffs who killed a Prisoner, (Mr. Lutterel,) in his own House by giving him nine Wounds with a Sword, and shooting him with a Pistol when he was fallen on the Ground, found Guilty of Manslaughter only; because it appeared that he had given one of them a Blow with his Cane. He had a Sword, which was drawn and broken; how did not appear. He had brought the Pistols into the Room, and declared he would not be forced out of his Lodgings. He threatened the Officers. Both the Officers were slightly wounded. *Rex v. Reason and Tranter, H. 8 G. Str. 499. Foster 292.*]

[If the Captain of a Ship has a Press-Warrant, directing that no Person but a Commission-Officer is to be intrusted with the Execution of it, and his Name to be inserted on the Back of it; and he accordingly appoints his Lieutenant, who stays in the Ship, and the Captain sends his Boat with some of the Crew to press, and some Leagues off they board a Ship, and attempt to press, and one of them is killed, it is Manslaughter; for they did not act according to the Warrant. *Broadfoot's Case, 1743. Foster 154.*] N. B. It was on Occasion of this Case that Mr. Justice Foster published his celebrated Argument, asserting the Legality of impressing Mariners for the Sea Service.

[It matters not who gives the first Blow. *Foster 295.*]

So upon a sudden Quarrel: As, if two quarrel for the Wall and fight, and one of them is killed. *H. P. C. 57. 3 Inst. 55.*

(M. 16.)
Upon a sudden Quarrel.

If two quarrel and one of them fetches a Weapon and kills the other. *H. P. C. 56.*

If two fight, and one of them breaks his Sword, and a Stranger gives him his Sword, with which he kills the other; this is Manslaughter in both. *H. P. C. 57.*

So, if two quarrel and agree to fight and fetch their Swords, and the one kills the other; for the Blood never cooled. *H. P. C. 48, 56. 3 Inst. 55.*

So, if two quarrel and part, and presently meet and fight, and one of them is killed. *H. P. C. 56.*

Tho' there was former Malice; if they were reconciled and quarrel upon a new Occasion. *H. P. C. 49.*

If they fight upon Malice, and are parted, and afterwards fight again upon a sudden. *H. P. C. 49.*

If A. and B. have Malice, A. challenges, B. refuses, but says he will go to such a Town, and in the Way A. assaults, and B. kills him. *H. P. C. 48.*

[A. gives provoking Language, B. strikes, Combat ensues, A. is killed; Manslaughter. *Foster 295.*

[B. draws his Sword, makes a pass at A. his Sword then undrawn, A. then draws, Combat ensues, A. is killed; Murder. But if B. had first drawn, but not made a pass till A. had drawn also, Manslaughter. *Ibid.*]

[If A. comes home drunk, his Father orders him to Bed, he refuses, a Scuffle ensues, B. another Son gets out of Bed, throws A. on the Ground, beats him, and A. in the Strife wounds B. with a Pen-knife, and he dies, it is Manslaughter. *Foster 278.*]

[If on Words arising in the Street, a Woman strikes a Man in the Face with an iron Patten, and draws much Blood, and he gives her a Blow on the Breast with the Pommel of his Sword; she flies, he pursues and stabs her in the Back; it is Manslaughter. *Stedman's Case, Foster 292.*]

Upon an Act not justifiable, tho' done without a mischievous Intent; As, if a Person in wrestling kills another. *H. P. C. 57.*

(M. 17.)
Upon an unjustifiable Act.

Or in Play at Foils. *H. P. C. 57. R. Al. 12.*

Or at Hand-sword, without the King's Command. *H. P. C. 32.*

Or in Justing, without the King's Licence. (*Vide 3 Inst. 56.*)

If a Man, shooting or throwing Stones into an Highway, kills another. *H. P. C. 32, 44, 58.*

Or shooting at a Deer in a Park. *H. P. C. 31. 3 Inst. 56.*

Or riding a Wild Horse among a Concourse of People. *H. P. C. 44.*

Or whips a Horse in the Street to make him run speedily, whereby a Child is killed. *H. P. C. 58.*

(M. 1.)

(M. 18.) Homicide.

Se defendendo.

Homicide is excusable, when done upon inevitable Necessity: as, for one's own Defence; for if a Man be assaulted and retreats to a Wall, and then in his Defence kills the Pursuer, it is not Murder, nor Manslaughter. *H. P. C. 41.* And this by the *St. Glo. 9. 2 Inst. 315. 3 Inst. 56.*

So if he retreat, when he can, without Danger of his Life.

Or till he fall down. *H. P. C. 41.*

Or, if he does not retreat, where the Pursuit is so fierce that there cannot be a Retreat with Safety of Life. *H. P. C. 41. 3 Inst. 56.*

Tho' there was Malice between the Assailant, and the Person who killed him in his own Defence. *H. P. C. 42.*

But if a Man strikes the Assailant before Retreat, and then kills him in his own Defence, this is Manslaughter. *H. P. C. 42.*

(M. 19.)
By Chance-
medley.

Or, when done by Misadventure: as, where a Man does a lawful Act without a bad Intent, and Death ensues. *H. P. C. 31.* By the *St. 52 H. 6. 26 de Marlb. 2 Inst. 148, 315.*

As, if a Man be shooting at Rovers, or at a Bird, and by Chance kills another. *H. P. C. 31. 3 Inst. 56.*

[It is only an act *malum in se*, not barely *malum Prohibitum*, that prevents the Death being Chance-medley; thus, an *unqualified* Person shooting at Game, falls under the same Rule as if *qualified*. *Foster 259.*]

Or cutting Wood, and the Ax-head flies off and kills. *H. P. C. 31.*

Or Justing by the King's Command. *H. P. C. 31.*

If a Father corrects his son, and by Accident kills him. *H. P. C. 31.*

Or a Master gives proper Correction to his Scholar. *H. P. C. 31.*

Or to his Servant. *H. P. C. 31.*

[If Parent or Master correcting with *dangerous* Weapon, kill, it is Murder; with *i proper*, but not likely to kill, as a Cudgel, Manslaughter; if with a *proper* Instrument, and *due Moderation*, accidental Death. *Foster 262.*]

If a Thief breaks an House in the Night, and *A.* rises and finds a Stranger there by Consent of a Servant, but not of the Master, hiding himself, and supposing him to be the Thief, kills him with his Sword. *R. Mar. 5.*

[If Death ensues from an Accident, happening at innocent and allowable Recreations, as Cudgels, Foils, Wrestling, engaged in by mutual Consent in Friendship, for Trial of Skill or Manhood, or Improvement in the Use of Weapons, it is Chance-medley. *Foster 259.*]

[This extends not to Prize-fighting, or public Boxing-matches for Lucre; nor to throwing at Cocks. *Foster 260, 261.*]

[If Workman throwing Rubbish out of a House, kills; if he gave warning accidental Death; if not, Manslaughter at least. *Foster 262.*]

[If in *London*, or populous Towns, such Warning not sufficient, unless early, and when few People are stirring. *Foster 263.*]

[If a Man driving a Cart, &c. kills; if he saw the Danger, Murder, if he did not, through Heedlessness, Manslaughter; if he took all due Care, accidental Death. *Ibid.*]

If a Man finds a Pistol, tries it with the Rammer, and thinks it unloaded, carries it Home, shews it his Wife, touches the Trigger, it goes off, and kills her, ruled Manslaughter; yet ought to have been only accidental Death. *Per Holt C. J. and Foster J. Ibid.*

[If a Man goes with his Wife on a *Sunday*, to dine at a Friends House, carries a Gun, in hopes of Sport, discharges it before Dinner, sets it in a private Place in his Friend's House, goes to Church, returns Home with his Wife and Neighbours, touches the Trigger and, the Gun having been loaded by another Person while he was at Church, kills his Wife, he shall be acquitted. *Foster 265.*]

[Death ensuing upon an Act unlawful, cannot be accidental Death; but if done deliberately, and with Intention of Mischief, Murder; if heedlessly, Manslaughter. *Foster 260, 261.*]

Or, when done by Warrant of Law, As, for the Advancement of Justice; As, (M. 20.)
if an Officer put another to Death pursuant to Judgment. *H. P. C. 35.* Justifiable.

[If an Officer by Warrant from the Crown, beheads a Man for Felony, or a Woman for Treason. *Foster 263.*]

If a Champion in a Writ of Right kills another; or a Combatant in an Appeal. *H. P. C. 37.*

If a Sheriff, Bailiff, &c. having a Warrant to arrest one indicted of Felony, kill him, if he will not obey the Arrest. *H. P. C. 36.*

So, a Person, who pursues upon an Hue and Cry. *H. P. C. 36.*

So, if a Person arrested for Felony, when a Felony is done, escapes from his Conductors to Gaol, and they cannot retake him without killing him. *H. P. C. 36.*

[If Felony is committed, or a dangerous Wound given, and the Felon flies, and cannot be otherwise taken, and is killed by any Person. *Foster 271.*]

If Rioters, &c. oppose a lawful Warrant of a Justice and one of them is killed. *H. P. C. 37.*

[If on a sudden Affray, tho' no Felony committed or Wound given, one interposes to part the Combatants, giving notice of his Intention, and is assaulted by them, or either of them, and kills. *Foster 272.*]

So, in Civil Process, if the Party resist, the Sheriff, &c. may kill him without retreating. *H. P. C. 37. 3 Inst. 56.*

Or, if in the Arrest the Sheriff kill him, it is not Felony. *H. P. C. 37: 3 Inst. 56.*

If an Officer, in Pursuit of Transporters of Wool, after Resistance, kills one of them. *3 Mod. 66.*

If a Prisoner assaults his Gaoler, the Gaoler may kill him. *H. P. C. 37. 3 Inst. 56.*

If Hunters in a Park fly or resist, the Parker may kill them. *H. P. C. 37. By the St. 21 Ed. 1. de Malefactoribus in Parcibus.*

So a Man may kill a Thief, who attempts to rob him upon the Highway, or in his House. *H. P. C. 39. Declared by the St. 24 H. 8. 5. 3 Inst. 56.*

And a Woman him that attempts to ravish her. *H. P. C. 39.*

Or a Man, who attempts burning an House. *H. P. C. 39.*

[If a Man by Violence or Surprize endeavours to commit a Felony on the Person, Habitation, or Property of another, he may repel Force with Force, is not obliged to retreat, but may pursue his Adversary till he finds himself out of Danger; and if in a Conflict between them he happens to kill, it is justifiable. *Foster 273.*]

[Or a Servant or By-stander may interpose, and if Death ensues, is justified. *Foster 274.*]

Otherwise, if he attempt only a Battery. *H. P. C. 40.*

Or if the Parker, &c. had Malice. By the *St. 21 Ed. 1. de Malefactoribus in Parcibus.*

In these Cases the Party shall be arraigned, and upon the special Matter found, if it be *Se defendendo*, or Chance-medley, he forfeits his Goods, but he shall have a Pardon of Course. *H. P. C. 32, 40.*

If it be justifiable Homicide, he shall be dismissed without Forfeiture, or Pardon. *H. P. C. 38.*

(N.) Misprision.

(N. I.) Of Treason.

ALL Treason includes Misprision. *H. P. C. 127. 3 Inst. 36.*

By the *St. 5 Ed. 6. 11.* Concealment of Treason shall be only Misprision: So, by the *St. 1 & 2 Ph. & M. 10. 3 Inst. 36.*

The Concealment is Misprision, tho' the Treason be made so by Statute. *H. P. C. 127. R. Kelt. 21.*

If one knows a Counterfeitor of the Coin, and does not discover him, that is a Misprision. *H. P. C.* 128.

By the *St.* 13 *El.* 2. Concealment of Bulls, &c. from Rome, is Misprision of Treason.

By the *St.* 14 *El.* 3. To counterfeit Coin not of this Realm, nor current here, is Misprision of Treason.

If *A.* be informed of a Design and of the Persons, it will be Misprision, tho' he says generally, that there is a Plot, &c. for he ought to discover all that he knows of the Design. *Kel.* 22.

And he ought to discover it to a Privy Counsellor, or a Justice of Peace. *Semb. Kel.* 22. *H. P. C.* 127. 3 *Inst.* 36.

But the Receiver of a Traitor knowingly, if he comforts him, is a Traitor. *H. P. C.* 127. 3 *Inst.* 138.

So Knowledge of Treason, and Assent, make a Traitor. *H. P. C.* 127.

Or, Approbation. *Kel.* 21.

Yet Concealment of a Fact, not Treason, is not Misprision. *Kel.* 33.

So a Man cannot be guilty of Misprision, without knowing the Design and the Persons. *Kel.* 21, 22.

One convicted of Misprision of Treason forfeits his Goods, his Land for Life, and shall be imprisoned for Life. *H. P. C.* 128. 3 *Inst.* 36.

(N. 2.) Of Felony.

Misprision of Felony is, when a Man conceals the Felony. *H. P. C.* 129. 3 *Inst.* 139.

Or, if he procures the Concealment. *H. P. C.* 129.

(N. 3.) Other Misprisions.

If a Man strikes in *Westminster Hall*, *sedente Curia*, it is a great Misprision, for which he shall lose his Hand, his Goods, the Profits of his Land for Life, and shall have perpetual Imprisonment. *H. P. C.* 13. 3 *Inst.* 140.

So, if he rescues a Prisoner from the Bar of the Court of *Chancery*, *B. R. C. B.* or *Exchequer*. *H. P. C.* 131. *Vide* 3 *Inst.* 141.

So, if in the Presence of the same Courts, or of Justices of Assize, or Oyer and Terminer, a Man draws his Sword and strikes another. *H. P. C.* 132. 3 *Inst.* 140.

Or, draws upon a Judge, tho' he does not strike him. *H. P. C.* 132. 3 *Inst.* 140.

By the *St.* 33 *H.* 8. 12. If a Man strikes in the King's Palace and draws Blood, he shall lose his Hand, and suffer Fine and Ransom and perpetual Imprisonment. (*Vide* 3 *Inst.* 140.)

If one utters Coin, knowing it to be counterfeit, it is a great Misprision, for which he shall be fined and imprisoned. *H. P. C.* 20, 128.

So, if one of a Grand Inquest discovers the Person indicted, or the Evidence against him. *H. P. C.* 131.

Or if a Man dissuades another from giving Evidence against a Felon. *H. P. C.* 131.

So, if a Man reproaches a Judge. *H. P. C.* 131. 3 *Inst.* 142:

Or assaults the Attorney of the adverse Party. *H. P. C.* 131.

Or abuses a Juror, who gives a Verdict against him, *H. P. C.* 131.

As to Praemunire

Vide Title *Praemunire*.

(O) Felony to Goods.

(O.) 1. Robbery, What.

ROBBERY is a felonious and violent Taking of Money or Goods of any Value, from the Person of a Man, putting him in Fear. *H. P. C. 71. 3 Inst.* ^(O. 1.) A violent Taking.

The Indictment says, *violenter & felonice cepit a Personâ, &c. in Terrorem*, and therefore differs from an Indictment of a Cut-Purse, which says, *clam & secreta a Personâ*. *H. P. C. 71, 74, 75. 3 Inst. 68, 69.*

If a Robber, by Terror, prevails with a Person to deliver his Money and takes it, it is a violent Taking. *H. P. C. 72. 3 Inst. 68.*

So if he compels him to swear to fetch him Money, which the Robber receives. *H. P. C. 72. 3 Inst. 68.*

Tho' he has no Weapon drawn to terrify. *H. P. C. 72.*

If he cuts a Girdle, by which a Purse falls to the Ground, and the Robber takes it up, it is a violent Taking. *H. P. C. 72. 3 Inst. 69.*

Though, upon seeing a small Sum in it, he redelivers it. *H. P. C. 72.*

Or lets it fall and does not take it up again. *H. P. C. 72. 3 Inst. 69.*

But if he takes nothing, tho' he assaults to rob, it is no Robbery. *H. P. C. 71.** ^{* [By the St. 7 G. 2. 21. He shall be adjudged guilty of Felony, and transported for 7 years.]}

Tho' he cuts the Girdle, and the Purse falls to the Ground, if he does not take it up. *H. P. C. 72. 3 Inst. 69.*

All aiding, or in Company to rob, are Principals, tho' only one takes it. *H. P. C. 72.*

If several come to rob *A.* who escapes; and afterwards one of them rides from the others, and out of their Presence and without their Privity, robs and returns to the Company, are all guilty. *H. P. C. 72.*

[If *A. B. C.* and *D.* in order to get the Reward, agree that *E.* shall procure a Person to rob *D.* and *E.* procures *F.* and they two take Money, and Goods from *D.* it is not a Robbery; for it cannot be said they were taken against his Will. *M. Daniel's Case, 1755. Foster 121.*]

[Yet if *A.* in order to apprehend a Highwayman goes out in a Chaise, and when the Highwayman comes up and demands his Money, gives it him, and then seizes him, it is a Robbery. *Norden's Case. Foster 129.*]

A Taking in my Presence is a Taking from my Person. *H. P. C. 73. 3 Inst. 69.*

[Taking in the Presence is taking from the Person; but in a Special Verdict it must be *expressly* found, that the Party robbed was present at the taking up, otherwise only Grand Larceny. *Rex v. Francis, P. 8 G. 2. Str. 1015. B. R. H. 113.*]

Taking of Beasts out of a Pasture in my Presence, after Terror done to me by an Assault or Violence, is Robbery. *H. P. C. 73. 3 Inst. 69.*

If a Man being assaulted to be robbed, throws his Money into a Ditch, and the Robber takes it. *H. P. C. 73. 3 Inst. 69.*

Or, if he drops his Hat, and the Robber takes it. *H. P. C. 73.*

Tho' the Value be under twelve Pence. *H. P. C. 73. 3 Inst. 69.*

Or only one Penny. *3 Inst. 69.*

^(O. 3.) Any Value.

Vide Post, (Y. 8.)

(O. 4.) Larceny, what.

Larceny is a felonious Taking of the Personal Goods of another. *H. P. C. 60. 3 Inst. 107.*

If it be above the Value of twelve Pence, it is Grand Larceny. *H. P. C. 69.*

If under that Value, it is only Petit Larceny. *H. P. C. 70, 75.*

So, if of the Value of twelve Pence. *2 Rol. 78. H. P. C. 70.*

Grand Larceny may be committed by a Taking *clam & secreta a Personâ*; as, by Picking a Pocket, Cutting a Purse. *H. P. C. 75.*

And

And the Indictment for this must say, *Clam & secretè*; for if it does not appear, by the Indictment or Verdict of the Jury, to be *clam & secretè à Personâ*, it does not differ from Common Larceny. *H. P. C. 75.*

Or it may be committed in a Man's Habitation. *H. P. C. 76. 3 Inst. 108. Vide Post, (P. 2, &c.)*

Or at large, without Regard to the Person or Habitation of any. *H. P. C. 6c. 3 Inst. 107.*

(O. 5.)
Who may
commit it.
*[Vide 3 Inst.
108. Cont.]

An Infant not of the Age of Discretion, viz. fourteen Years, may commit Larceny. *H. P. C. 65.**

But it is prudent to respite the Judgment. *H. P. C. 65.*

A Woman by her own Act may commit it, tho' Covert. *H. P. C. 65. 3 Inst. 108.*

And the Command of her Husband does not excuse her. *H. P. C. 66.*

But the Coercion of her Husband excuses her; but not in Murder. *H. P. C. 65. 3 Inst. 108.*

And if done in Company with her Husband, it shall be intended by his Coercion. *H. P. C. 65.*

Tho' she commits Burglary. *R. Kelt. 31.*

Yet the Coercion of a Master does not excuse the Servant. *H. P. C. 66.*

And if the Woman cannot prove her Marriage, it does not excuse her. *R. Kelt. 37.*

(O. 6.)
What is a fe-
lonious Tak-
ing?

The Indictment shall say, *Cepit*; for, *felonice abduxit*, is not sufficient. *H. P. C. 61.*

If a Man steals my Horse, and A. steals it from him; A. may be indicted for a felonious Taking from me. *H. P. C. 64.*

If a Man takes a Woman with the Goods of her Husband against her Will, it is Felony. *H. P. C. 64.*

If A. kills my Sheep and takes only the Skins, it is Felony. *H. P. C. 64.*

Or, the Wool. *H. P. C. 64.*

If a Man takes a Horse by Colour of a Replevin. *H. P. C. 63. 3 Inst. 108.*

If he takes any Thing out of a Trunk and lays it on the Floor, but being surprised leaves it there. *R. Kelt. 31.* for by such Taking he had the Possession.

Tho' the bare Use was permitted to him: As, if a Guest steals Plate brought for his Use. *H. P. C. 61. 3 Inst. 108.*

Or Sheets from his Bed. *H. P. C. 64. 3 Inst. 108.*

Or tho' the bare Charge was committed to him; As, if a Butler steals Plate committed to his Charge. *H. P. C. 61. 3 Inst. 108.*

Or a Shepherd, Sheep. *H. P. C. 61. 3 Inst. 108.*

Or tho' the Thief be apprehended before the Goods removed: As, if a Guest carries Sheets down Stairs *animo furandi*, but is apprehended before he gets out. *H. P. C. 64. 3 Inst. 108.*

If a Man steals an Horse, but is taken before he gets out of the Pasture. *H. P. C. 64. 3 Inst. 109.*

If several come with an Intent to steal, and one of them takes Goods, they are all Felons. *Per Kelt. 47.*

But it is not Felony, if a Man finds Goods and converts them *animo furandi*. *H. P. C. 61.*

Or, if a Wife delivers them to him, without the Assent of the Husband. *H. P. C. 64. Sho. 52.*

Or, if he obtain them by false Token, or counterfeit Letter. *Vide the St. 33 H. 8. 1.*

So, if Possession was delivered: As, if A. lend an Horse to a Stranger, who never returns with it, it is no Felony. *H. P. C. 61.*

If a Clothier deliver Yarn to a Weaver, who imbezils or runs away with it. *H. P. C. 61, 62.*

If a Carrier carry away Goods delivered to him. *H. P. C. 61.*

If a Goldsmith imbezil Plate committed to him to be wrought. *Sho 52.*

If a Woman hire a Room furnished, and afterwards carry away the Furniture. *Sbo. 54. R. Kelt. 24. 14 Car. 2.*

Yet, if the Privy be determined upon which the Delivery was made, it is Felony: As, if the Carrier open a Pack or Trunk and take the Goods out. *H. P. C. 62.*

Or, if he carry them to the Place appointed, and afterwards steal them. *H. P. C. 62.*

If a Throwster delivers Silk to a Workman in his House to be workt, and he steals it; for the whole Property remained in the Owner. *R. 1664. Kel. 35.*

And by the *St. 21 H. 8. 7.* If a Servant imbezil or go away (of Intent to steal) with any Money, or Goods entrusted with him to the Value of forty Shillings, it is Felony. Provided not to reach an Apprentice, or one under eighteen.

If Goods are delivered to a Servant by another Servant, it is within the Statute. *H. P. C. 62.*

But if the Servant waste or consume, &c. it is not within the Statute. *H. P. C. 63.*

Or, if he receive Rent for his Master and run away with it. *H. P. C. 63.*

Or, if the Master deliver Beasts to him to sell, and he runs away with the Money after the Sale. *H. P. C. 63.*

Or, if he deliver an Obligation to him, and he receives the Money due, and departs. *H. P. C. 63.*

Or, if he departs with the Obligation itself. *H. P. C. 63.*

Or, if he does not continue Servant at the Time of the Delivery, and the Running away with the Goods. *H. P. C. 63.*

If a Man take feloniously any moveable Goods of another, it is Felony.

Tho' he had but a special Property, as Bailiff. *H. P. C. 67. 3 Inst. 110.*

Cloth in the Hands of a Taylor. *H. P. C. 67.*

Goods in the Hands of a Carrier. *R. Kelt. 39.*

Tho' the Owner himself take them, with Intent to charge the Bailee, &c. for them. *H. P. C. 67.*

Tho' the Owner be uncertain: for he may be indicted, *quare bona Mortui, bona Ignoti, &c.* *H. P. C. 67.*

So, *quare bona Capellæ, or Parochianorum*, if he takes the Goods of a Church or Chapel, in the Time of Vacation. *H. P. C. 67. 3 Inst. 110.*

So, if he takes a Shroud from a Person buried, he shall be indicted, *quare bona Executorum.* *H. P. C. 67. 3 Inst. 110.*

Tho' the Things taken be *Fera Naturæ, si sint domui aut manui assueti*, and the Thief knows them to be tame. *H. P. C. 68.*

As, if he take a Deer, Coney, Crane, Partridge or Pheasant, which he knows to be tame. *H. P. C. 68. 3 Inst. 110.*

Or a Swan mark'd and pinion'd. *H. P. C. 68.*

Or not mark't, if it be tame in a Moat, Pond, or private River. *H. P. C. 68.*

An Hawk reclaimed. *H. P. C. 66. 3 Inst. 109.*

And by the *St. 37 Ed. 3. 19.* If he steal any Hawks, &c. and does not proclaim it. *3 Inst. 97.*

So, if they be restrained of their natural Liberty *Ratione Impotentia*, as young Hawks, and young Pigeons in the Nest. *H. P. C. 68.*

Vel Ratione loci; as, old Pigeons in a Dovehouse. *H. P. C. 68.*

Fish in a Net, Trunk; or separate Pond. *H. P. C. 67. 3 Inst. 109.*

But there can be no Felony of Things *Fera Naturæ*, tho' privileged *ratione loci*; as Deer, Conies, in a Park, Warren, or Inclosure. *H. P. C. 68.*

Nor, of Things reclaimed or tame, when they regain their natural Wildness. *Vide Biens, (F.)*

So an Indictment, *quare Bona B.* where they are the Goods of another, will be bad, and the Defendant acquitted.

So, if it be, for Goods of the Marquis of B. where he is only the eldest Son of a Duke. *R. Sal. 451.*

Nor, of Things of a base Nature tho' tame; as Bears, Foxes, Monkeys, Ferrets, or their Whelps. *H. P. C. 66. 3 Inst. 109.*

Tho' *domitæ natura*; as, a Mastiff, or other Dog. *H. P. C. 66. 3 Inst. 109.*

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H

Nor,

(O. 7.)
What Goods;

Nor, of Things Real, or annexed to the Realty; as, of Corn, or Grass growing, Apples on Trees. *H. P. C. 66. 3 Inst. 109.*

Lead taken from a Church. *H. P. C. 66.*

Otherwise, if left there after Severance, and at another Time removed. *H. P. C. 66. 3 Inst. 109.*

Nor, of a Copper fixed to an House. *R. 1664. Kelt. 29.*

Nor taking an Infant in Ward. *H. P. C. 66. 3 Inst. 109.*

Nor a Chest with Charters, tho' the Chest be above the Value of 12 *d.* *H. P. C. 66. 3 Inst. 109.*

[Stealing a Commission to settle Boundaries, out of the Six Clerk's Office, is not Felony; and on Indictment for it the Prisoner shall be discharged. *Rex v. Wellbeer, 12 Geo. 2. Str. 1133.*]

Yet Stealing an Obligation is Felony; for it is a *Chose en Action*. *H. P. C. 67.*

Nor, of Things which are *Nullius in Bonis*; as, Treasure-Trove, Wreck, Waife, or Stray before Seifure. *H. P. C. 67. 3 Inst. 108.*

(O. 8.)
What Value.

If a Man be indicted in the same Indictment for taking of 4 *d.* at one Time and 10 *d.* at another from the same Person, this is Grand Larceny. *H. P. C. 70.*

If two take Goods to the Value of 13 *d.* it is Grand Larceny in both. *H. P. C. 70.*

But tho' Goods are valued in the Indictment at 10 *d.* the Jury may find specially Guilty to the Value of 10 *d.* and that will be Petit Larceny. *H. P. C. 70.*

Vide Post, (Y. 9, 10.)

(P) Felony to the Habitation.

(P. 1.) Arson.

Arson was Felony by the Common Law, when a Man maliciously burn't the House of another. *H. P. C. 85. 3 Inst. 66.*

The Indictment need say only, *Domum*. *H. P. C. 86. 3 Inst. 67.*

When a Man burns a Mansion House, it is Felony. *H. P. C. 86. 3 Inst. 67.*

Or, a Stable, Mill-house, Sheep-house, Barn, Parcel of the Mansion. *H. P. C. 86. 3 Inst. 67.*

Or, a Barn with Corn or Hay, tho' it be not Parcel of the Mansion. *H. P. C. 86. 3 Inst. 67.*

Tho' he intended the House of another; and he may be indicted, *quod ex malitia præcogitata combussit domum C.* tho' the House of B. was designed. *H. P. C. 85. 3 Inst. 67.*

Tho' only Part of the House was burn't. *H. P. C. 85. 3 Inst. 66.*

By the *St. 22 & 23 Car. 2. 7.* It shall be Felony, If in the Night with Malice any burn Stacks of Corn or Hay, Buildings, Kilns, &c.

But setting Fire, if no Part of the House is burn't, is not Felony. *H. P. C. 85. 3 Inst. 66.*

Or, burning of his own House, with Intent to burn the House of another, if it be not burn't. *H. P. C. 85.*

[If A. being intitled to Dower out of a House, but no Dower assigned, and having the Care of her Son who has the Equity of Redemption in it, subject to a Mortgage-Term, lets it to B. and receives the Rent, and orders her Daughter C. to set fire to it, and goes from Home, and C. does it, they are both Guilty. *Harris's Case, 1753. Foster 113.*]

[If a Man seized of the Freehold and Inheritance of a House, of which another is in Possession under a Lease, burns it, he is Guilty. *Ibid.*]

[Either Landlord or Tenant may be Guilty, for each has a Property. *D. per Foster, Ibid.*]

Vide Post, (Y. 6.)

(P. 2.) Bur-

(P. 2) Burglary.

Burglary is, when a Man *Noctanter* breaks and enters a Mansion House of another, with a felonious Intent. *H. P. C. 79. 3 Inst. 63.*

(P. 2.)
If one in the
Night.

Noctanter is said, when the Face of a Man cannot be distinguished. *H. P. C. 79. 3 Inst. 63.*

So, by the *St. 12 Ann. 7.* If he enter by Day, or Night, with Intent to commit Felony, or commit Felony and break the House in the Night to get out, it is Burglary.

It a Man actually breaks a Mansion House he commits Burglary. *H. P. C. 80. 3 Inst. 64.*

(P. 3.)
Breaks

So, if he breaks the Window. *H. P. C. 80. 3 Inst. 64.*
[If a Man cuts a Hole in the Window-Shutter, and puts in his Hand and takes out Goods. *Gibbons's Case, 1752. Foster 107.*

Breaks the Wall. *H. P. C. 80.*

Unlocks the Door. *H. P. C. 80.*

Or draws the Latch. *H. P. C. 80.*

So, if he, being within the Mansion House, draws the Latch and enters a Chamber. *H. P. C. 82. R. v. Gray. M. 8 G. 1. Str. 481.*

If the Thief enters by the open Door and *A.* retreats to a Chamber, into which the Thief breaks. *H. P. C. 81.*

[If he has broke into the House, and taken Goods from one Room to another, in order to carry them off, but is apprehended in the House. *Foster 107.*]

[Breaking open a Chest, or a Cupboard let into the Wall, is not Burglary at Common Law. *Ibid.*]

If he enters by the open Door, and after stealing Goods, breaks the House to get out. *H. P. C. 81.*

If he comes down the Chimney. *H. P. C. 81.*

If a Servant opens the Window to let him in. *H. P. C. 81.*

[If a Servant lets in a Thief at the Street-Door, and lets him out, tho' he does not go out with him, it is Burglary in both. *Per all the Judges. Cornwall's Case, M. 4 G. 2. Str. 881.*]

If the Thief makes Hue and Cry, brings a Constable to whom the Owner opens the Door, and then the Thief enters. *H. P. C. 81. Kelt. 44. 3 Inst. 64.*

If one breaks, &c. and the others watch in the Street, all are Burglars. *H. P. C. 81. 3 Inst. 64.*

If a Thief in the Night comes to rob, and finding the Door locked pretends to speak with the Owner, and upon such Pretence the Servant opens the Door and the Thief enters and robs. *R. Le Mott, Kelt. 42.*

If by Fraud he has a Judgment in Ejectment, and arrest the Party in a false Action, and then enters and robs. *R. Farr, 1665. Kelt. 43.*

But if the Thief enters by the open Door and gets out so, it is no Burglary. *H. P. C. 81.*

Or, if he enters by a Hole made in the Wall before. *H. P. C. 82.*

Or, if he assaults the House, and the Owner throws out his Money. *H. P. C. 81.*

An Entry is necessary; but if he steps within the House, it is an Entry. *H. P. C. 80. 3 Inst. 64.*

(P. 4.)
And enters

Or, if he puts his Hand or Foot within the Door or Window. *H. P. C. 80. 3 Inst. 64.*

Or, an Hook, or Pistol. *H. P. C. 80. 3 Inst. 64.*

So, if he turns the Key of a Door lock't on the Inside. *H. P. C. 80.*

The Indictment must say, *Domum mansionalem.* *H. P. C. 86. 3 Inst. 64.*

(P. 5.)
A Mansion
House

A Church is a Mansion House. *H. P. C. 82. 3 Inst. 64.*

So, a Shop. *H. P. C. 83. 3 Inst. 64.*

So,

So, a Chamber within the Inns of Court, if it be inhabited. *H. P. C. 83.*

By the *St. 5 Ed. 6. 9.* A Booth, or Tent in a Fair, or Market in which any then remains.

An House, from which all are occasionally absent. *H. P. C. 82. 3 Inst. 64.*

So, if a Man inhabits sometimes in one House sometimes in another, both are Mansion Houses. *H. P. C. 82. Kelt. 52.*

[Where the Owner quits the House *animo revertendi*, it may be considered as his Mansion-House, though no Person is in it, but there must be an Intention of returning, or Burglary cannot be committed. *Nuthbrown's Case, 1750. Foster 76.*]

If a Woman hires an House, and lives separate from her Husband, and the Lease being in the Husband's Name he refuses to have it, yet it shall be the Mansion House of the Husband. *R. Kelt. 44.*

If a Man hires an House for his Habitation and removes his Goods thither, and before he lodges there, the House is broke. *Dub. Kelt. 46.*

But a Barn, or Stable disjoined, at a Distance from the House, are not Mansion Houses at this Day. *H. P. C. 82.*

Nor, a Shop let to another, who works there by Day, but does not abide there by Night; for it is severed by Lease from the Mansion House to which it is annexed. *H. P. C. 83.*

The Indictment must say, *Domum Mansionalem Domini Regis*, if it be in a Chamber in Whitehall. *Kelt. 27.*

Domum Mansionalem Dominae Reginae, and not of the Possessor, if it be in a Chamber in Somerset-House. *R. Kelt. 27.*

(P. 6.)
With a felonious Intent.

If the Entry be with a felonious Intent, it is Burglary, tho' the Intent be not executed; as, with Intent to murder. *H. P. C. 82. 3 Inst. 65.*

Or, to commit a Rape. *H. P. C. 83. R. 1664. Locost and Villars. Kelt. 30.*

[If a Servant opens his Lady's Chamber-Door fastned with a Bolt, with an Intent to commit a Rape, it is Burglary. *Rex v. Gray, M. 8 G. Str. 481.*]

But if a Man enters and breaks a Mansion House with Intent to commit a Battery or Trespass, it is no Burglary. *H. P. C. 83. 3 Inst. 65.*

If several Men enter with Intent to search for suspected Persons and one of them steals, it is Felony in him; but the others not being privy are not Guilty. *Per Kelt. 47.*

Tho' they take Soldiers, and without a Constable, &c. break the House, which cannot be justified. *Per Kelt. 47.*

The Indictment shall say, *Burglariter*. *H. P. C. 84. 3 Inst. 65.*

Vide Post, (Y. 7.)

(Q) Breaking of Prison.

Vide Imprisonment, (M. 3.)—Escape.

(R) Rescue of a Prisoner, and Escape.

Vide Rescous.

RESCUE of a Felon out of Prison, or Custody, was Felony at Common Law. *2 Inst. 589. H. P. C. 116.*

Rescue of a Traitor is Treason. *H. P. C. 116. 2 Inst. 590.*

If A. takes a Prisoner with him, out of the Door of the Place where Prisoners stand for Trial at the Old Bailey, it will be a Rescue. *R. Kelt. 45.*

But there must be a Felony committed. *H. P. C. 116.*

And a lawful Commitment. *H. P. C. 116.*

And the Principal ought to be attainted before the Rescuer be arraigned. *H. P. C. 116.*

If the Principal die before he be attainted, the Rescuer shall only be fined and imprisoned. *H. P. C. 116.*

Or, if he prevent the Arresting of a Felon. *H. P. C. 116.*

If there be a Rescue of a Person arrested at the Suit of a Common Person, he shall have an Action against the Rescuer. *Vide. Escape*, (B. 1, &c.)

Or, if there be a Rescue of a Distress made.

[To support an Indictment as for an Offence of *breaking* the Prison, an Actual *Breaking* must be laid; that *A. assisted* the Prisoner to *escape*, is not sufficient. *Rex v. Burrige*, M. 1735. 3 P. W. 439.]

For a Rescue, *rescussit*, or something equivalent, is necessary to shew it was against the Gaoler's Will. *Ibid.*

As to Escape, *Vide Escape*, (A. 1, 2.)

(S) Felony by Statutes.

(S.) Durefs.

By the St. 14 Ed. 3. 10. If a Gaoler compels a Prisoner by *Durefs* to be an Appellor, it is Felony. *Vide Imprisonment*, (I.)

(S. 2.) Rape.

Rape was Felony at the Common Law, and afterwards altered to the Loss of Eyes and Testicles. 2 Inst. 180.

By the St. W. 1. 3 Ed. 1. 13. The Penalty was mitigated to Fine and Imprisonment.

But by the St. W. 2. 13 Ed. 1. 34. It is provided, that if a Man ravish a Woman, &c. he shall have Judgment of Life and Member.

And if she did not consent she shall have an Appeal: but if she afterwards consent she loses the Appeal, yet he shall be indicted at the King's Suit. 2 Inst. 433.

By the St. 6 R. 2. 6. If the Woman afterwards assent to the Ravisher, both shall lose their Inheritance, Dower, or Joint Estate after the Death of the Husband or Ancestor, and the next in Blood shall enter; and he or the Husband shall have an Appeal.

The Indictment shall say, *Rapuit*, which no Word supplies. Co. L. 124. a.

Rape is when a Man by Force has carnal Knowledge of a Woman against her Will. Co. L. 123. b.

Tho' it be of a Niece by the Lord. Co. L. 123. b. 2 Inst. 181.

There must be Carnal Knowledge. (Vide H. P. C. 117. 3 Inst. 60.)

Penetratio as well as *Emissio*. H. P. C. 117. 3 Inst. 60.

Tho' Consent be forced, by the Fear of Death or Durefs, it is a Rape. 3 Inst. 60.

But if there be Consent, it is no Rape. 2 Inst. 433.

If the Woman prove *privement enseint* it is Evidence of Consent.

So, if she be an Harlot; Yet an Harlot may be ravished.

Or, was his Concubine before.

By the St. 18 El. 7. Carnal Knowledge of an Infant under ten Years old is Felony, tho' there be Consent.

Whoever aids the Rape is a Ravisher. H. P. C. 118.

Vide Post, (Y. 12.)

(S. 3.) Forcible Marriage of a Woman contrary to 3 H. 7. 2.

By the St. 3 H. 7. 2. It is enacted, that Persons who take a Maid, Widow, or Wife, having Substance in Goods or Lands, or being an Heir apparent, against her Will to marry or defile her, their Abettors and Receivers, knowing the same, are Felons.

If she be married tho' not deflowered, it is within the Statute. R. 1 Vent. 244.

Tho' she consent to the Marriage, being under a Force. H. P. C. 119.

All Accessories, before or after, are Principals. H. P. C. 119. 3 Inst. 61.

The Woman is a good Witness. R. 1 Vent. 244.

But forcible Marriage of a Niece or Ward, is not within the Statute. *H. P. C.* 118. 3 *Inst.* 61.

Nor Privies to the Marriage, if not privy to the Force. *H. P. C.* 119.

If the Taking be in one County and the Marriage in another, the County where they were married may inquire of the Forcible Taking. *H. P. C.* 119.

Vide Post, (Y. 12.)

(S. 4.) Buggery.

By the *St.* 25 *H.* 8. 6. received by the *St.* 5 *El.* 17. When any commit Buggery with Mankind, or Beast, and is convicted by Verdict, Confession, or Outlawry, he shall suffer as a Felon, without Benefit of Clergy.

[Indictment *quod A. super B. virginem insultum fecit, & eandem B. contra Ordinem naturæ carnaliter cognovit, & rem veneream in ano ipsius B. habuit, eamque B. contra ordinem Naturæ in dicto ano ipsius B. carnaliter cognovit*; the Defendant was convicted of Buggery at the Assizes, but reprieved, to have the Opinion of the Judges, whether it was Buggery within the Statute. Most of the Judges were of Opinion it was, but two or three that it was not; and no unanimous Opinion given. *Rex v. Wiseman*, 4 *Geo.* Fort. 91.

Vide Post (Y. 13.)

(S. 5.) Polygamy.

By the *St.* 1 *Jac.* 11. If any in *England* or *Wales* being married, marry again, the former Husband or Wife being living, it is Felony, unless the Husband or Wife were absent beyond Sea for seven Years before; or in the Realm without Knowledge of his or her Life, or the former Marriage was within the Age of Consent, or annulled by Sentence in the Ecclesiastical Court, or there was a Divorce. Provided not to forfeit Dower, or corrupt Blood.

A Marriage after a Divorce *a Mensâ & Thoro*, is not Felony within the Statute. *H. P. C.* 122. *R. Mar.* 101. (*causa Adulterii.*) *R. Kelt.* 27. 3 *Inst.* 89.

Nor a Marriage of one beyond Sea, and of another within the Realm. *R.* 1 *Sid.* 171.

But a Divorce for Severity, is no Excuse of Felony. *R. Mar.* 101. *Dub. Cro. Car.* 462. But said it was *R.* to be within the Proviso. *Kelt.* 27.

The first Husband is no Witness to prove his Marriage. *R. Ray.* 1.

[A Woman cannot maintain Action against a Man for this Offence, if he has been convicted and burnt in the Hand for it; for the Action merges in the Felony. *Barnes* 450.]

(S. 6.) Malicious Mayhem.

By the *St.* 5 *H.* 4. 5. If any cut out the Tongues, or put out the Eyes of any of the King's Liege People, of Malice prepense, it is Felony.

By the *St.* 22 & 23 *Car.* 2. 1. If any of Malice, and by lying in wait, cut out or disable the Tongue, put out the Eye, slit the Nose, cut off the Nose or Lip, cut off or disable any Member of any Subject, with Intent to mayhem or disfigure him, it is Felony in him, his Aiders, or Abettors, without Clergy.

By the *St.* 22 & 23 *Car.* 2. 7. if any maliciously, in the Night time, kill or destroy any Horses, Sheep, or other Cattle, it is Felony.

(S. 7.) Felonious Hunting, &c.

By the *St.* 37 *Ed.* 3. 19. If any steal and carry away a Hawk, not doing according to the Ordinance, it is Felony.

And by the *St.* 1 *H.* 7. 7. The King's Council or the Justices of Peace, on Information of Hunting by Night, or with painted Faces, may issue a Warrant to arrest the Persons, and if any arrested conceal those with him, or if any make

Rescous,

Rescous or Disobeyance to the Warrant, so that it cannot be executed; or if any be convict of hunting in the Night, or with Vizors or painted Faces, it is Felony.

[The several Facts in the Black Act, 9 G. 2. are several Offences; and if any Person armed appears in a High-road with his Face blacked, or otherwise disguised, he is guilty of Felony without Clergy. *Rex v. Baylis*, T. 9 G. 2. B. R. H. 291.]

(S. 8.) Soldiers departing without Licence.

By the St. 18 H. 6. 19. If any, being mustered, and entered the King's Soldier of Record, and receiving the King's Wages, departs from his Captain, unless disabled by Sickness to go, of which he shall give Notice to his Captain, and repay his Money: Or, being a Soldier, Man of Arms, or Archer, so mustered of Record, and passing the Seas with his Captain, returns without Licence from his Captain under his Hand and Seal for reasonable Cause, during his Term, he is Guilty of Felony.

But this Act is of little Force; for the ancient Manner of Retaining and Covenant with Soldiers is discontinued. R. 6 Co. 27. 3 Inst. 86.

Yet by the St. 5 El. 5. it was extended to Mariners and Gunners.

By the St. 7 H. 7. 1. If any Soldier being no Captain, retained with the King, being in Wages and retained; or taking Prest to serve the King on the Sea, or upon Land beyond Sea, shall depart out of the King's Service without Licence of the Captain, it is Felony without Clergy.

And by the St. 3 Hen. 8. 5. If any Soldier, being no Captain, retained with the King, who shall be in Wages and retained; or take any Prest to serve the King upon the Sea, or on the Land, or beyond Sea, departs without Licence of the Lieutenant, it is Felony without Clergy, (not being within the Orders of Holy Church.)

By the St. 2 & 3 Ed. 6. 2. If any, having served the King, departs without Licence, out of the King's Service, or out of Garrison, it is Felony without Clergy.

The Statutes 7 H. 7. 1. and 3 H. 8. 5. are perpetual. R. 6 Co. 27. 3 Inst. 86.

And Departure from a Conductor is Felony, for he is a petit Captain. R. Cro. Car. 72.

[Officers in the *East-India* Company's Service cannot resign at all Times, and under any Circumstances; and while in their Pay and Service are subject to their Military Law. *Parker v. Ld. Clive*. P. 9 G. 3: 4 B. M. 2419. *Virtue v. Ld. Clive*; M. 10 G. 3: 4 B. M. 2472.]

(S. 9.) Egyptians, Rogues, Wandering Soldiers, &c.

By the St. 1 & 2 Pb. & M. 4. Persons calling themselves Egyptians, conveyed into the Realm and remaining here a Month, if above thirteen Years old, are Felons without Clergy, unless in twenty Days they betake themselves to an honest Way of living.

And by the St. 5 El. 20. such as continue a Month at one or several Times in Company of Vagabonds, commonly called Egyptians, or by Apparel, Speech, or Behaviour counterfeiting themselves such, if above 14, shall suffer as Felons without Clergy.

By the St. 39 El. 4. Dangerous Rogues, banished the Realm by Justices of Peace and returning without a Licence, be Felons.

By the St. 39 El. 17. Idle and wandering Soldiers or Mariners, who will not betake to any lawful Course of Life, or to the Place of their Birth or Abode: And such who come from beyond Sea, and have not a Testimonial from a Justice of Peace, or counterfeit such Testimonial, or have one known to be counterfeit, be Felons without Clergy.

By the St. 1 Jac. 7. A dangerous Rogue in Sessions shall be branded, and if he afterwards beg or wander, shall be adjudged a Felon without Clergy.

Vide Justices of Peace, (B. 76.)

(S. 10.) Ex-

(S. 10.) Exportation of Sheep, &c.

By the *St. 8 El. 3.* Such, as after Conviction for the first Offence, shall export Sheep alive out of the Realm, are guilty of Felony; but not to corrupt Blood, or lose Dower

By the *St. 13 & 14 Car. 2. 18.* If any export into *Scotland*, or other foreign Parts, or pack or load, or cause to be packed or loaden, of Intent to be exported, any Sheep of the Breed of *England* or *Wales*, or the Dominions thereof, or any Wool, Woolfells, Morthings, Shorlings, Yarn made of Wool, Woolflocks, Fuller's Earth or Fulling Clay, it is Felony.

But by the *St. 7 & 8 W. 3. 28.* This Act is repealed, as to making the Exportation of Wool Felony.

(S. 11.) Refusing Abjuration, &c.

By the *St. 35 El. 1.* If any above sixteen, who shall for a Month without Cause refuse to hear Divine Service, go about to perswade any of the Realm to impugn the Queen's Authority in Cases Ecclesiastical, or to that End perswade to forbear coming to Church according to Law, or to be present at a Place of religious Assembly contrary to Law, or shall of himself or by Incitements of others be present at such Assembly, and being convict of such Offence, and for not conforming three Months after Conviction, being required by the Justices, in Quarter Sessions, &c. to abjure the Realm, shall refuse to abjure, or after Abjuration shall refuse to depart at the Time limited, or shall return, &c. he shall be a Felon without Benefit of Clergy. Provided not to corrupt Blood, or lose Dower.

By the *St. 3 Jac. 4.* If any pass out of the Realm to serve, or do voluntarily serve any foreign Prince, without having taken the Oath of Allegiance: Or (being a Gentleman or of higher Degree, or a Captain, Lieutenant, or Conductor of Soldiers) without giving a Bond of 20*l.* Penalty conditioned not to be reconciled to the See of *Rome*, or to enter into any Plot against the King or Realm, but to disclose all such, he shall be a Felon.

By the *St. 35 El. 2.* A Popish Recusant above sixteen and convict for not coming to Church, (not being a *Feme Covert*, nor having twenty Marks *per Annum* in Lands, Tenements, or Annuities, nor to the Value of 40*l.* in Goods,) if he repair not to his Dwelling or Place of Birth in forty Days after Conviction, (unless stayed by Imprisonment, Order of the Queen or six Privy Council, or Sickness) and then certify his Name to the Minister or Constable, or after depart above five Miles from Home, shall abjure; and if he refuse to abjure, or after to depart the Realm, or return, he shall be adjudged a Felon, without Benefit of Clergy.

Vide Sacraments.

(S. 12.) Embezzlement of Stores.

By the *St. 31 El. 4.* If any, having Charge, &c. of Purpose to hinder her Majesty's Service, wittingly imbezil, purloin, or convey away any Armour, Ordnance, Munition, Shot, Powder, or Victuals for Soldiers, &c. or other Habilliments of War, at one or several Times to the Value of 20*s.* he shall suffer as a Felon; Provided he be prosecuted within a Year; not to corrupt Blood, or lose Dower.

And by the *St. 22 Car. 2. 5.* Clergy is taken away.

(S. 13.) Witchcraft.

By the *St. 1 Jac. 12.* If any practice Invocation, or Conjuraton of any evil Spirit; or shall consult, covenant with, &c. any evil Spirit; Or take up any dead Body, Skin, Bone, &c. to be used in any Manner of Witchcraft, Sorcery, Charm, or Inchantment; or shall use any Witchcraft, Inchantment, Charm, or Sorcery

Sorcery, whereby any Person shall be killed, wasted, or lamed in his Body or any Part of it, their Abettors, Aiders, &c. Or if any, after Conviction for the first Offence, shall take upon him by Witchcraft, Inchantment, Charm, or Sorcery, to tell where Treasure may be found in the Earth; or lost Goods may be found; or to the Intent to provoke to unlawful Love; or whereby Cattle or Goods shall be destroyed or impaired; or to hurt any Person in his Body, tho' the same be not effected, he shall suffer as a Felon without Clergy. Provided not to corrupt Blood, or lose Dower. *

At Common Law, Witchcraft was punished as Heresy, by the Writ *de Hæretico Comburendo*. H. P. C. 6. 3 Inst. 44.

But now there is no Remedy but by the St. 1 Jac. 12. H. P. C. 6. 3 Inst. 45.

By this Statute, it is Felony to consult, covenant with, entertain, employ, feed, or reward an evil Spirit; tho' no Act be thereupon done. H. P. C. 6. 3 Inst. 45.

So, to take up a dead Body, &c. to use in Witchcraft; tho' not used. H. P. C. 6. 3 Inst. 45.

So, to take upon them to tell where Treasure or Goods shall be found, how Love shall be provoked; tho' they cannot do it. H. P. C. 7. 3 Inst. 46.

But to use Sorcery, &c. whereby any one may be killed, or destroyed, or Goods or Cattle destroyed, is no Felony, unless the Mischief be done. H. P. C. 7. 3 Inst. 45, 46.

In all Cases, where a 2d Offence is Felony, there must be an actual Conviction and Judgment for the first Offence. H. P. C. 8. 3 Inst. 46.

And the 2d Offence must be committed after Judgment for the first. H. P. C. 8. 3 Inst. 46.

The St. 1 Jac. 12. is repealed (except so much as repeals the St. 5 El. 16.) and no Prosecution shall be carried on for Witchcraft, &c. And if any Person pretend to exercise any Witchcraft, Sorcery, &c. or undertake to tell Fortunes, or pretend to discover where Goods, supposed to be stolen or lost, may be found he shall be imprisoned for a Year, and once in every Quarter of it be set on the Pillory, and (if the Court think fit) be bound for his good Behaviour.

* (This Statute is repealed by the St. 9 G. 2. 5. *Vide Margin infra.*)

* (By the St. 9 G. 2. 5.)

(S. 14.) Felony by later Statutes.

[By stat. 14 G. 2. c. 6. §. 1. Whoever steals, or kills with Intent to steal, any Part of any Sheep or other Cattle or assists in so doing is guilty of Felony without Clergy.]

[Seff. 2. Ten pounds Reward on every Conviction to be paid by Sheriff in a Month; on default, he forfeits double the Sum, and treble Costs.]

By stat. 15 G. 2. c. 34. The word Cattle in the above Act declared to extend to Bull, Cow, Ox, Steer, Bullock, Heifer, Calf and Lamb, as well as Sheep, and to no other Cattle whatsoever.]

[By stat. 16 G. 2. c. 15. Convicts found at large in *Great Britain*, without lawful Cause, before the Expiration of the Term for which they were ordered to be Transported, or had agreed to transport themselves, to suffer as Felons without Clergy.]

[By stat. 16 Geo. 2. c. 31. Persons assisting Prisoners to escape, or conveying Disguise, Instruments or Arms to facilitate it, *though no Escape be actually made*, or assisting Prisoners to escape from the Constable, or from a Boat carrying Felons to Transportation; if the Prisoners were for Treason or Felony, (except petty Larceny) shall be guilty of Felony, and transported for Seven Years; and if the Prisoners were for Petty Larceny, or other Crime expressed, or for Debts amounting to 100 l. Guilty of Misdemeanor, and liable to Fine and Imprisonment.]

[By stat. 18 G. 2. c. 27. Persons stealing, or hiring others to steal, Linen, Fustian or Cotton Goods, from Places used for printing, whitening or drying them, are Guilty of Felony without Clergy; or may be transported (on favourable Circumstances,) for 14 Years.]

[By stat. 18 G. 2. c. 30 Subjects during War exercising Hostilities against Subjects, under Colour of Commission from the Enemy, shall be tried and suffer as Pirates.]

[By 19 G. 2. c. 34. Smugglers armed or disguised, to the Number of three, and Persons being charged on Oath, the Justice is to certify, to Secretary of State, and an Order of Council made for their Surrender in forty days, and published, they not

surrendering, are Felons without Clergy; Persons abetting them, to be transported; the Hundred to pay for any Person killed or wounded, or Goods rescued; 500 *l.* for apprehending Offender; 50 *l.* to Person maimed; 100 *l.* to Executors of Person killed in apprehending, or attempting to apprehend.]

[By *stat.* 24 G. 2. c. 45. Stealing to forty Shillings Value from Ship or Wharf is Felony without Clergy.]

[By *stat.* 25 G. 2. c. 10. Breaking into Mine of Black Lead, with Intent to take, or taking it, or assisting in taking, is Felony, and Offender may be imprisoned one Year, and whipt, or transported for seven Years.]

[Receivers liable to the Penalties of Receivers of stolen Goods.]

[By *stat.* 25 G. 2. c. 37. Rescuing or attempting to rescue from Prison, a Person committed for, or found guilty of Murder, or a Person convicted of Murder, going to, or during Execution, is Felony without Clergy; and rescuing, or attempting to rescue, the Body after Execution, is Felony and Transportation.]

[By *stat.* 27 G. 2. c. 15. Sending threatening Letter, or rescuing one in Custody for so doing, is Felony without Clergy.]

[By *stat.* 29 G. 2. c. 12. Forging Stamp to Ale-Licence, Felony without Clergy.]

[By *stat.* 29 G. 2. c. 13. Forging Stamp for Cards or Dice, and uttering Cards and Dice with forged Stamp, knowingly, Felony without Clergy.]

[By *stat.* 29 G. 2. c. 17. Entering into *French* military Service as Officer, without King's Licence, is Felony without Clergy.]

[Person hiring others, or contracting himself to enter into Foreign Service without Licence, Felony without Clergy; and Officers in the *Scotch* Brigade in *Holland*, to take the Oaths, on pain of 500 *l.*]

[By *stat.* 29 G. 2. c. 30. Receiving stolen Lead, Iron, &c. is Felony and Transportation for fourteen Years, though the Thief is not convicted; and various Regulations for detecting and punishing inferior Degrees.]

[By *stat.* 31 G. 2. c. 10. Personating Seaman to whom Wages, &c. is supposed due, or his Representative, or forging Letter of Attorney, Tickets, &c. or making false Oath to obtain Probate of Will in order to receive Wages, &c. is Felony without Clergy; and by *stat.* 9 G. 3. c. 30. Uttering such Forgery is so also.]

[By *stat.* 6 G. 3. c. 28. Maliciously destroying Silk in the Loom, or entering House to destroy, is Felony without Clergy.]

[By 9 G. 3. c. 29. Riotously destroying Mills, maliciously setting fire to Mills, is Felony without Clergy; maliciously destroying Engine for draining Mines, or drawing out Coals or Ore, or Way for conveying the same, or any Fence for Inclosing or dividing Lands in Pursuance of Act of Parliament, is Felony, and Transportation for seven Years.]

[By *stat.* 10 G. 3. c. 48. Receiving stolen Jewels, Plate or Watches where they were taken burglariously or on the Highway, is Felony and Transportation for 14 Years; and receiver may be tried before Conviction of Principal, whether in or out of Custody.]

[By *stat.* 12 G. 3. c. 24. Destroying Men of War, or Naval Stores in a Dock-Yard, is Felony without Clergy; and Persons offending out of the Realm may be tried, in any County.]

[By *stat.* 12 G. 3. c. 48. Writing on Stamps already used, or taking off Stamp to put it on other Paper, is Felony and Transportation.]

[By *stat.* 13 G. 3. c. 56. Counterfeiting Stamps for Silks, &c. to be printed, is Felony without Clergy.]

[By 13 G. 3. c. 59. Counterfeiting Stamps on Gold and Silver Plate is Felony, and Transportation for fourteen Years; (by 31 G. 2. it was Death.)]

[By *stat.* 13 G. 3. c. 79. Causing the Words *Bank of England* to appear in the Substance of any Paper, or having Instruments for that Purpose, is Felony without Clergy.]

[And Engraving Note or Bill, containing the Words *Bank of England*, or *Bank Post Bill*, or Words expressing the Sum in White Letters, on a Black Ground, or using such Plate, or any Instrument to make such Note, or having such Plate or Instrument, or uttering such Note, (except demanding Payment from the Drawer, Acceptor or Indorser) is six Months Imprisonment.]

[By

[By *stat* 14 G. 3. c. 72. Counterfeiting Stamps for *British* Cottons printed, or selling such Cottons with counterfeit Stamps, knowingly, is Felony without Clergy.]

(T) Accessory.

(T. 1.) Before the Fact, Who shall be.

A CCESSORIES to a Felony are before, or after the Felony committed.
2 *Inst.* 182. 3 *Inst.* 138.

A Man, who by his Command, Counsel, Contrivance, Consent, or Encouragement, incites or moves another to commit a Felony, tho' he be not present when it is done, will be an Accessory before. 2 *Inst.* 182. *H. P. C.* 217.

As if he urge, perswade, or procure him to do it. 2 *Inst.* 182.

If he furnish him with a Weapon, &c. for such Intent. 2 *Inst.* 182.

[Whoever procures a Felony to be committed, tho' by the Intervention of a third Person. *M^r Daniel's Case*, December 1755. *Foster* 121.]

[Or if he consents beforehand. *Ibid*]

Tho' the Fact vary in the Circumstance of the Command, &c. As, if *A.* command, &c. *B.* to poison *D.* and he shoots him, &c. *H. P. C.* 217.

So tho' the Execution of the Fact exceeds the Command: As, if the Command be to commit a Robbery, and he in the Robbery kills. *H. P. C.* 217.

So, if the Command be only for a tortious Act not Felony, and he in the Execution commits Felony: As, where the Command was to beat another, and by the Battery he killed him. *H. P. C.* 217.

If a Statute makes a new Felony, he shall be Accessory who would be so before. *Sal.* 543. *H. P. C.* 215.

But where the Fact varies in the Substance and Nature of the Crime from the Command, &c. he who commanded will not be Accessory: As, if the Command be to kill *A.* and he kills another Person. *H. P. C.* 217.

[Although if *A.* commands *B.* to kill *C.* (whom he *B.* well knoweth) and he kills *D.* *A.* is not Accessory; Yet if *A.* commands *B.* to kill *C.* (whom he *B.* knoweth not) describing him, and *B.* kills *D.* by Mistake, *A.* is Accessory. *Foster* 370.]

[Or if *A.* commands *B.* to burn the House of *C.* and he does it, and the Flames take hold of the House of *D.* *A.* is Accessory to the burning of *D.*'s House. *Ibid.*]

If the Command be to commit a Robbery, and he commits a Burglary. *H. P. C.* 217.

So, if a Statute makes a particular Fact, which was an Offence by the Common Law, more penal; the Accessory shall not be subject to the Penalty, unless he was present. *Per Holt*, But the other Justices Semble Contra. *Sal.* 542, 3.

[Although in the Language of the Law there are no Accessories in High Treason; Yet those Persons whose Guilt is of a derivative Nature, so connected with and arising out of that of another that it cannot exist without it, should be considered during the intermediate Steps towards Conviction, as in the Nature of Accessories, or a Kind of Accessories: They should not be arraigned till the principal Offender is convicted; if he is acquitted, they should be discharged. *Foster* 341 to 346.]

[Thus the Act of Parliament for reversing Mrs. *Lisle's* Attainder, calls her Prosecution irregular and undue; because *Hicks*, whom she concealed, was not at the Time of her Trial attainted or convicted of High-treason. *Foster* 346.]

[This Rule holds in every Thing but compassing the Death, &c.; for every such Treason is a compleat Overt Act, tho' the Fact is never effected or attempted. *Ibid.*]

[In Felony, a Principal may be in the first or second Degree, he in the first is he who commits the Fact, in the second, he who is present, aiding and abetting at the Commission. *Foster* 347, 349.]

[But an actual Presence is not necessary, a constructive Presence is sufficient. *Foster* 350.]

[A Person present, aiding and abetting Rioters is a Principal in the second Degree under 1 *Geo.* 1. *st.* 2. c. 5. *R. v. Royce*, *P.* 7 *Geo.* 3. 4. *B. M.* 2073.]

[Encourage-

[*Encouraging and abetting* are Words sufficient in a special Verdict, tho' *aiding* is omitted. *Ibid.*]

[Principals in the second Degree were in old Times deemed only Accessories, and therefore this Alteration was introduced about *Edward* the Third's Time, that Aiders and Abettors present might be brought to their Trials while the Fact was recent, tho' the Perpetrators were not then amenable. *Foster* 348, 359.]

[He who is not present at the Perpetration, can be no more than an Accessary before the Fact, except in special Cases. *Foster* 349.]

[If *A.* with Intention to destroy *B.* lays Poison properly disguised in his Way. *B.* takes it and dies; *A.* tho' absent when the Poison taken, is a Principal. *Ibid.*]

[If *C.* instigates *A.* so to do, *C.* if absent is only an Accessory. *Ibid.*]

[If *A.* and *C.* both mingle the Poison and lay it, both are Principals. *Ibid.*]

[If *A.* prepares Poison, and delivers it to *D.* to be administered to *B.* as a Medicine, and *D.* in *A.*'s Absence does it, *not knowing it to be Poison*, *A.* is Principal. *Ibid.*]

[If *D.* knew it to be Poison, he is Principal, and *A.* if absent Accessory. *Ibid.*]

[If *A.* incites a Madman, or Infant not of Years of Discretion to commit Felony in his Absence, *A.* is Principal; if a Child of sufficient Discretion, only an Accessory. *Ibid.*]

[If *A.* is present at a Murder but takes no Part, nor yet endeavours to prevent, nor to apprehend, nor to levy Hue and Cry; he is neither Principal nor Accessory, tho' highly criminal. *Foster* 350.]

[If it is in a Case of Assassination, &c. it may be Evidence of his Concurrence. *Ibid.*]

[If *A.* advises *B.* to poison his Wife, she gives it to their Child *C.* who eats it, *B.* standing by; *A.* is not Accessory. *Foster* 371.]

[The general Rule is this, if the Principal committed the Felony under the Influence of the Advice of *A.* or if the Event was in the ordinary Course of Things a probable Consequence of that Felony, *A.* is Accessory; but if the Principal, following the Suggestions of his own Heart, wilfully and knowingly commits a Felony of another Kind, or upon another Subject, *A.* is not Accessory. *Foster* 372.]

(T. 2.) After the Fact, Who shall be.

Accessory after will be, when a Man receives and aids a Felon, knowing that he is a Felon, after an Offence committed. 2 *Inst.* 183. *H. P. C.* 218.

Tho' it be his Brother, or Wife. *H. P. C.* 219.

As, if he conceal him in his House. (*Vide Dalt.* 530, 531. c. 161. S. 7.)

Or supply him with Money, Horse, or other Provision for his Journey. *H. P. C.* 218.

[By *St.* 6 *G. c.* 23. To assist Felons convict to make their Escape from the Persons to whom they are delivered to be transported, is Felony without Clergy.]

[But then it must be laid that the Defendant had Notice of the other Felony or Conviction. *Rex v. Burrige, M.* 1735. 3 *P. W.* 439.]

[One becomes Accessory to a Felony after the Fact, by assisting a Felon convict in Custody under Sentence of Transportation, to escape out of Prison, provided it be such Assistance as amounts to receiving, harbouring or comforting such Felon. *Ibid.*]

[Before the *St.* 4 *Geo. c.* 11. If an Offender after Clergy allowed had escaped before burnt in the Hand, where actual Burning should take place, whoever unlawfully comforted him became Accessory after the Fact; for by 18 *Eliz. c.* 7. both were necessary to the Discharge from the Felony, and to constitute the State Pardon. *Ibid.*]

[Yet if he is not burnt by reason of the Doubt or Delay of the Court, it shall not turn to the Prisoner's Prejudice, but he may plead Conviction (as of Manslaughter) to an Appeal. *Ibid.*]

[By

[By the *St. 4 G. c. 11*. Judgment of Transportation is only put in the Place of Judgment for Burning in the Hand, and not in the Place of actual Burning. *Rex v. Burridge, M. 1735. 3 P. W. 439.*]

[In Indictment for being Accessory after the Fact, in receiving a Felon, it must be charged that the Defendant knew he was convicted; and this is not aided by the Finding of the Verdict, especially if it be a Finding not of Notice, but Evidence of Notice. *Ibid.*]

So, by the *St. 3 & 4 W. & M. 9.* and *5 Ann. 31.* A Buyer or Receiver of stolen Goods knowing them to be stolen.

So receiving an Accessory to a Felony, makes him Accessory. *H. P. C. 219.*

But by the Common Law, a Receipt of Goods stolen did not make him Accessory, unless he received the Felon. *H. P. C. 218.*

[A Receiver of stolen Goods may be indicted for a Felony, or for a Misdemeanor. *Rex v. Pollard, M. 11 G. 2. Ld. Raym. 1370.*]

[A Receiver of stolen Goods cannot be prosecuted for a Misdemeanor, if the Principal is in Custody; the Determination in *1 Ld. Raym. 1370. supra*, being because the Court would not on Motion arrest Judgment on an Exception never taken before, and which would overturn every Judgment on the Statute. *Foster 373.*]

Nor Receipt of a Felon when the Felony is not compleated; as after the Wound, and before the Death. *H. P. C. 219.*

Or, when a Felony was only intended. *H. P. C. 219.*

So Relief of a Felon in Prison; or bound in Surety for his Appearance, does not make a Man Accessory. *H. P. C. 218.*

So a Man will not be Accessory, who does not apprehend a Felon. *H. P. C. 216, 219.*

Or does not prevent the Felony. *H. P. C. 216.*

Or suffers the Felon's Escape, when he pursues him, or he comes to his House. *Mo. 8. H. P. C. 220.*

Or writes in his Favour. *H. P. C. 219. 3 Inst. 139.*

Or instructs him to read, or advises to prevent the Appearance of a Witness against him. *H. P. C. 219. 3 Inst. 139.*

Or agrees for Money, that he will not give Evidence against him. *Dub. Mo. 8.*

So, if a Wife receive her Husband, she shall not be Accessary. *H. P. C. 219.*

So he that would be Accessory to Felony by the Common Law, will be so if a Statute makes a new Felony. *H. P. C. 215.*

But in High Treason there is no Accessory, for Procurers, Abettors, &c. are all Principals. *2 Inst. 183. H. P. C. 215. 12 Co. 81.*

Nor, in Petit Larceny. *R. Cro. El. 750. 12 Co. 81. 2 Inst. 183.*

So, in every Felony, all present and aiding are Principals, tho' only one does the Act. *H. P. C. 215.*

Tho' they do nothing, if they come with Intent to assist *H. P. C. 216.*

Or, if they do not come with a bad Intent, but being present furnish a Sword, &c. *H. P. C. 216.*

So, if they come with Intent to aid, tho' not within View. *H. P. C. 216.*

So all present and consenting to a Poison prepared, tho' absent when taken. *H. P. C. 216. 2 Inst. 183.*

So, if they leave Poison for another. *H. P. C. 216.*

So, by the *St. 3. H. 7. 2.* All Persons taking a Woman (having Lands or Goods) against her Will, and procuring and abetting the same, and receiving her knowingly, are to be judged principal Felons.

So, in Manslaughter, there can be no Accessory before. *Mo. 461. H. P. C. 217.*

Nor, if Forgery, which is Felony for the 2d Offence. *R. Mo. 666.*

So it cannot be an Accessory, where there is no Principal.

So, if the Principal be convicted for Murder, the Accessory cannot be for Petit Treason. *H. P. C. 215. 3 Inst. 139.*

(T. 3.) How arraigned, and tried.

If the Principal be acquitted, or die before Attainder, the Accessory shall not be arraigned. *H. P. C. 221. 2 Inst. 184.*

So, if the Principal be convicted only *Se defendendo*. *H. P. C. 221.*

Or, of Manslaughter, if he be charged as Accessory before. *H. P. C. 221.*

So, if the Principal be pardoned before Attainder. *H. P. C. 221. 2 Inst. 183.*

3 *Inst. 139.* Or have his Clergy. *H. P. C. 221. 2 Inst. 183. 3 Inst. 139.*

Otherwise if after Attainder. *H. P. C. 221. R. Ray. 477.*

So, if the Principal stand mute. *H. P. C. 221. 2 Inst. 184.*

[An Accessory may be tried, though the Principal stands mute, or is admitted to Clergy, or pardoned after Conviction, and before Attainder. By 1 *Ann. stat. 2. c. 9.*]

The Accessory shall not be tried before the Principal be attainted. *H. P. C. 222.*

By the *St. W. 1. 3 Ed. 1. 14.* Exigent does not go against him, till the Principal be attainted.

Nor shall he be arraigned at the Suit of the Party, when the Principal is attainted at the Suit of the King. *H. P. C. 221. 2 Inst. 184.*

Or, if the Principal be attainted of another Felony. *H. P. C. 221.*

But the Accessory may be arraigned before the Principal be attainted or appears. *H. P. C. 222.*

Or he may be tried before, if he consent. *H. P. C. 222.*

[If the Accessory by his choice is tried, before the Principal, and convicted, Judgment should be respited till the Principal is convicted and attainted. *Foster 367.*]

Or, if one Principal be convicted, when he is charged as Accessory to two, he may be tried, if the Court please. *H. P. C. 222.*

And if acquitted as Accessory to him, he may be afterwards tried as Accessory to the other. *H. P. C. 222.*

[To convict an Accessory, it is not necessary to enter into a Detail of the Evidence on which the Principal was convicted; but if it appears that he was not Guilty, the Accessory shall be acquitted. *Macdaniel's Case, 1755. Foster 121, 365.*]

[If the Principal is convicted of Petit Larceny, there can be no Judgment against the Receiver on the 4th G. 1. for there can be no Accessory. *Evans's Case, 1749. Foster 73.*]

[The Accessory may avail himself of the Insufficiency of Evidence, or Incompetency of Witnesses, produced against the Principal; and may shew that the Facts charged and proved against the Principal do not, in Judgment of Law, amount to Felony; or that the Principal was innocent. *Semb. Foster 364. & seq.*]

He may be tried by the same Inquest with the Principal; but the Inquest shall be charged to dismiss him, if the Principal be acquitted. *H. P. C. 222. 2 Inst. 184.*

And if convicted, Judgment shall be first against the Principal. *H. P. C. 222.*

By the *St. 2 & 3 Ed. 6. 24.* Where the Stroke or Poison is in one County and the Death in another, there may be an Appeal against Accessories in the County where the Party died, tho' Accessories in another County. And by the same *Statute*, the Accessories may be indicted in the County where they were Accessories, tho' not the same County where the principal Offence was committed.

[If a Man is indicted as Accessory before the Fact, and acquitted, he may be indicted as Principal; but not *vice versa*. *Foster 361. Sed Q. per Foster.*]

If a Man indicted as Principal be acquitted, he cannot be afterwards indicted as Accessory before. *R. Ket. 26. H. P. C. 224.*

But the Court may discharge the Jury before Verdict. *R. Ket. 26.*

And he may afterwards be indicted as Accessory after. *R. Ket. 26.*

[If a Man is indicted as Accessory to two, and is found Accessory to one, Judgment may pass on him. *Foster 361.*]

[If the Principal is erroneously attainted, and then the Accessory tried, convicted and attainted, and then the Attainder of the Principal reversed for Error; this reverseth the Attainder of the Accessory, and the Accessory should have a reasonable Time to procure such Reversal. *Foster 366.*]

[If the Principal is outlawed, and thereupon the Accessory tried, convicted and attainted, and afterwards the Principal comes in, reverseth the Outlawry, pleads over

over to the Felony, and is acquitted; this reverseth the Attainder of the Accessory.
Foster 367.]

Vide Post, (Y. 4, &c.)

(V) Approver.

(V. 1.) Who shall be.

PROCEEDING against a Criminal is, by Appeal, by Indictment, or as Approver. *H. P. C.* 176.

As to Appeal, *Vide Title Appeal.*

As to Indictment, *Vide Title Indictment.*

An Approver is a Common Person, indicted for Treason or Felony, who confesses the Indictment before Plea, and then, being sworn for Discovery of all Treasons or Felonies, enters his Appeal against *Participes Criminis* for the Offence in the same Indictment. *H. P. C.* 192. 3 *Inst.* 129.

A Man may be an Approver, tho' he be maimed or 70 Years old, whereby he cannot wage Battle. *H. P. C.* 192. * * *Vide 3 Inst.*
129. *Semb.*
cont.

(V. 2.) Who not.

But a Peer of the Realm cannot be an Approver. *H. P. C.* 192. 3 *Inst.* 129.

Nor an Infant, Idiot, *Non Compos*, Clerk, or Woman. *H. P. C.* 192. 3 *Inst.* 129.

So Confession, before Indictment against him, does not make him an Approver. *H. P. C.* 193. 3 *Inst.* 129.

So, if he plead to the Indictment, he cannot be an Approver; for he appears false. *H. P. C.* 193.

Nor an Appellee in an Appeal. *H. P. C.* 193. 3 *Inst.* 129.

And therefore, if there be an Appeal against him after the Indictment confessed, the Approvement ceases. *H. P. C.* 193. 3 *Inst.* 129.

Nor an Appellee of an Approver. *H. P. C.* 193.

So a Person, indicted before Justice of Peace in a Tourn or Leet, cannot be an Approver. *H. P. C.* 194. 3 *Inst.* 130.

And if the Appeal be for an Offence not contained in the same Indictment, it will be a Detection, but no Approvement. *H. P. C.* 194. 3 *Inst.* 130.

Tho' of an Accessory to the same Offence. *H. P. C.* 194.

And it shall be in the Discretion of the Court, whether he shall be allowed to be an Approver. *H. P. C.* 194. 3 *Inst.* 129.

(N. 3.) Proceeding upon an Approvement.

An Approver, if he refuses Combat against the Appellee, shall be drawn and hanged, as in Petit Treason. 3 *Inst.* 21.

Vide Officer, (G. 6.)—(*Vide 3 Inst.* 130.)

(W. 1.) Trial per Pares.

TRIAL for a Capital Offence shall be by Battail, by Inquest, or by his Peers. *H. P. C.* 254.

As to Trial by Battail, *Vide Battle*, (A. 1, &c.)

As to Trial by Jury, *Vide Inquest*, (A. 1, &c.)

When there shall be Trial of a Peer by his Peers, *Vide Dignity*, (F. 1, 2.)—*Parliament*, (L. 16, 17.)

Trial of a Peer upon an Impeachment, or Indictment shall be before the Lords in Parliament. 3 *Inst.* 28. *Vide Parliament*, (L. 13, 16, 18, &c.)

Trial of a Common Person shall be by the Justices of B. R.

Or, by Justices of Gaol Delivery, or upon a Special Commission of Oyer and Terminer. *Vide Ante*, (G. 1, &c.—H.)

(W. 2.) The

(W. 2.) The Manner of Trial in a Criminal Case.

(W. 2.)
How the Pri-
soner shall be
arraigned.
*Vide Indi-
ment. (M.)*

In a Trial for High Treason, or Felony, a Precept goes to the Sheriff by four Commissioners (*Quorum unus*) if the Trial be by Commission of Oyer and Terminer, commanding him, *quod Venire faciat Prisonar' cum Indictamento, &c. et 24 probos & legales homines, &c. Proclamari faciat quod omnes sint ibi, qui sequi voluerint, & Scire faciat Justic' Pacis, &c. Et quod ipse & Subviccomes ibi sint ad faciend' omnia quæ ad Officia pertinent.*

After the Precept returned, the Grand Jury sworn and charged, and the Indictment found, the Indictée shall be arraigned. *Vide Indictment, (M.)*

By the Common Law, Treason shall be tried in the County where committed.

Foreign Treason, where the Offender's Land lies. *H. P. C. 15, 204. 3 Inst.*

11.

But by the *St. 35 H. 8. 2.* (which is not repealed by the *St. 1 M. 1.*) Treasons and Misprisions done out of the Realm shall be tried in *B. R.* or before such Commissioners, and in such Shire as the King shall assign. *3 Inst. 11.*

Ireland is out of the Realm. *H. P. C. 205. 3 Inst. 11.*

If the King sign the Commission, or put his Signet to the Warrant, it is sufficient. *H. P. C. 205. 3 Inst. 11.*

If *B. R.* remove after Indictment, the Trial shall be by a Jury of the first County. *H. P. C. 204.*

By the *St. 28 H. 8. 15.* Treasons, &c. within the Admiral's Jurisdiction, shall be tried at Land, by Commission under the Great Seal to the Admiral, or his Lieutenant and others.

By the *St. 1 & 2 Ph. & M. 10.* All Treasons shall be tried according to the Course of the Common Law, and not otherwise.

By the *St. 7 W. 3. 3.* A Person indicted for Treason, which corrupts Blood, or Misprision, shall have a Copy of the Indictment five Days before Trial, and a Copy of the Jury two Days before, and make Defence by Counsel, and the Court shall assign him two such Counsel as he desires, who shall have free Access.

[In Treason, it is good and usual to give the Prisoner a Copy of the Indictment five Days before Arraignment, exclusive of that Day and the Day of Delivery, and also of the intervening Sunday. *Foster 2.*]

[And of the Pannel two Days, with like Exclusion. *Foster 230.*]

[The Delivery of the Copy of the Panel is good, though it is before the Return of the Precept. *Ibid.*]

[On Affidavit of Witnesses wanting for Defence, the Court will give Time according to Circumstances.]

[At Common Law, (and all High Treasons not within *7 W. 3. c. 3.* Petty Treasons and Felonies stand in this Respect on the Foot of Common Law,) a Prisoner is not intitled to a Copy of the Indictment or Pannel, or any of the Proceedings. *Lord Russel* had it by Favour. *Lord Preston* was denied it. *Charnock, King and Keys* were denied it after passing the Act, and a Fortnight before it took place. *Foster 228.*]

[The Prisoner should have a Copy of the Caption, though the Act mentions only the Indictment; but, after pleading, he cannot make Objection for want of it, or any other Defect in the Copy. *Foster 229.*]

[At Common Law no Council is allowed on Issue, Guilty or Not Guilty, in any capital Case, except on Questions of Law; and then only in doubtful Cases. Accordingly it was refused on the Trials for the Assassination-Plot, after the Act had passed, but before it took Place; and in *Sir William Perkins's* Trial, the very Day before it took Place. *4 State Trials, Foster 231.*]

[Counsel, as to Matters of Fact in Impeachments, are excepted in the Act. *7 W. 3. c. 3.* and were denied to *E. Winton* in 1716, and to *Lord Lovat* in 1746. *Foster 232.*]

[But by *St. 20 G. 2. c. 30.* Persons impeached of High Treason, working Corruption of Blood, or of Misprision of such Treason, may make their full Defence by two Counsel.]

[On

[On Trial of Issue, not of guilty or not guilty, but of collateral Facts, Prisoners under a capital Charge of Treason or Felony, were always intitled to the full Assistance of Counsel. *Stafford's Case*, 1 H. 7. *Johnson's Case*, Str. 824. *Harvey*, P. 20 G. 2. &c. *Foster* 232.]

[By 7 Ann. c. 21. §. 11. On Indictment for High Treason or Misprision, after the Death of the Pretender (*who died in 1766*), a Copy of the Indictment with a List of the Witnesses to be produced at the Trial for proving the Indictment, and of the Jury, mentioning the Names, Professions and Places of Abode of the Witnesses and Jurors shall be delivered before two Witnesses, ten Days before the Trial.]

[By St. 6 G. 3. c. 53. It is enacted, that this Clause shall not extend to Indictments for counterfeiting the Coin, the Great or Privy Seal, Sign Manual, or Privy Signet, or any Indictment of High Treason, or Proceedings thereon against Offenders to be tried on such Evidence, and in such Manner as is allowed against Offenders for counterfeiting the Coin.]

[If Felon convicted, and Sentence of Death passed, breaks Gaol, commits Murder, is retaken, and in Custody on the former Conviction, and detained on Warrant from the Coroner, is brought by *Habeas Corpus* before B. R. they proceed as in *Ratcliff's Case infra*, the second Judge pronounces Award of Execution, on the former Sentence; the Court will not name a Day, and a Rule is made to deliver him to the Sheriff of the County, who executes when he thinks proper. *Rex v. Rogers*, Str. M. 6 G. 3. 3 B. M. 1809.]

[Prisoners may be kept chained during such Proceeding, if Danger is apprehended. *Ibid.*]

[On a mere Commission of Oyer and Terminer, no Pannel is ordered, till Defendant has pleaded to Issue, and Issue is joined, and it is then done by Precept in the Nature of a *Venire*; and if there is Want of Jurors, a *Habeas Corpora* with a *Tales* may possibly issue. *Foster* 63.]

[No *Tales* can be granted on a Commission of Gaol Delivery. *Ibid.*]

He may challenge thirty-five without Cause. *H. P. C.* 260.]

[The Court will order, that the whole Pannel may be read over, before any Jurymen is brought to the Book, that the Prisoner may the better know how to make his Challenges. *Townley's Case*, 1746. *Foster* 7.]

[If the Prisoner challenges peremptorily, and for Cause, so many Jurors that there are not sufficient left on the Pannel to proceed to Trial, the Court (if there is a Commission of Gaol Delivery as well as Oyer and Terminer) may *ore Tenus* order a new Pannel and adjourn for some Days. And the Sheriff may return those who had been challenged or sworn before, or he may return all new ones. *Cooke's Case*, 4 State Trials 728. *Foster* 63.]

[If the Commission is by Virtue of an Act of Parliament, both which are recited in the Caption of the Indictment, it is not necessary that it should set forth the *Tesse* of the Conviction. *Foster* 11.]

[If the Act impowers the King to grant Commissions to try Persons in Custody before a future Day, it is not necessary that the Indictment set forth that the Defendants are in Custody; if it appears on the Record that they were in Custody before the Day, Judgment shall not be arrested. *Foster* 12.]

[In a capital Case, where the Prisoner may make his full Defence by Counsel, the Court may discharge the Jury on the Motion of Prisoner's Counsel, and at his own Request, and with the Consent of the Attorney General, *before Evidence given*, in order to let the Prisoner in to a Defence, which, in the Opinion of the Court, he could not have been otherwise let into. *Kinlock's Case*, 1746. *Foster* 22.]

[But not after Evidence given, in order to preferring a new Indictment better suited to the Nature of the Case, where through Ignorance or Collusion of Officer, or Mistake of Prosecutor, the Fact varies from the real Fact, or comes short of it in Point of Guilt. *Semb.* Though it hath been done, particularly in *Ann Hawkins's Case*. *Ibid.*]

[Yet if a Man is indicted for Murder, and it comes out in Evidence, that he stood in such Relation as to render the Offence Petty Treason, the Court may discharge

discharge the Jury of that Indictment, and order a fresh one for Petty Treason. *Foster* 328.]

[But not where undue Practices appear to have been used to keep material Witnesses out of the Way, or where such Witnesses have been prevented by sudden and unforeseen Accident. *Semb.* Though this also has been done. *Foster* 22.]

[Nor after Evidence given and concluded on the Part of the Crown, for want of Evidence to convict, and in order to bring the Prisoner to a second Trial, when the Crown may be better prepared. Though this has also been done, particularly in *Whitebread* and *Fenwick's Case*, *Ibid.*]

[Nor on the bare Consent of the Prisoner unassisted by Counsel, and to his own Prejudice. Though done in *Mansell's Case*, after Evidence on both Sides concluded. *Ibid.*]

[If a Woman on her Trial is taken with the Pains of Labour, the Jury may be discharged of her. *Meadow's Case*, 1750. *Foster* 76.]

[If one convicted and attainted of High Treason before Commissioners, escapes, and is afterwards retaken, he shall be brought to the Bar of B. R. by *Habeas Corpus*, and the Record of his Conviction and Attainder removed thither by *Certiorari*; they shall be read to him; the Attorney General prays Execution, and he shall be asked, why Execution, &c. He may have Counsel, but not a Copy of the Record. His Counsel may have a Rule for Access to him. If he pleads he is not the Person, the Attorney General may reply *ore tenus*, and a *Venire* awarded returnable *instanter*, and so the Trial, unless Grounds for postponing laid before the Court. He hath no peremptory Challenge. He may have Assistance of Counsel, who may cross-examine. If the Jury find against him, he shall not have Time, before Award of Execution; for his Plea being peremptory, the Verdict is conclusive, and nothing remains but Award of Execution; (unless in Case of Parliamentary Pardon, with Clause to avail himself thereof on general Issue. *Semb.*) *Ratcliff's Case* 1746. *Foster* 40.]

[When Judgment has been once pronounced, it is not pronounced again, but Execution awarded. *Ibid.*]

[On Attainder by Name, by Act of Parliament, the Tenor of the Act is removed by *Certiorari* into Chancery, and thence sent by *Mittimus* into B. R. and the Judgment of High Treason is pronounced by the Chief Justice, as an Award of Execution grounded on the Act of Attainder. *Ibid.* *John Murray of Broughton's Case*, 1746. *Foster* 47. *Dr. Cameron's Case*, 1753. *Foster* 109.]

[And the Prisoner is brought up by *Habeas Corpus ad subjiciendum & recipiendum*, and if the Attainder is by a general Act (as for the Smugglers) the several Matters requisite to bring him within the Act, must be suggested on the Roll, to ground a Prayer of Execution; and he may traverse them, and the *onus probandi* lies on the Crown. *Harvey's Case*, P. 20 G. 2. *Foster* 51.]

[He cannot take Advantage of Insufficiency of Suggestion on Motion, but must demur to it. *Ibid.*]

[If he pleads, he must do it *instanter* and *ore tenus*, and the Attorney General replies so. *Ibid.*]

[The Trial may be put off to a future Day. *Ibid.*]

[He is not intitled to a Copy of the Suggestion. *Ibid.*]

[If the Act requires, that a Proclamation to surrender should be made and fixed up at two Market Towns near the Place, and it is done at one near it, and at two others at a considerable Distance, though there are several much nearer; it is not sufficient, and the Attorney General takes nothing by his Motion. *Ibid.* *Will.* 154.]

[If A. and B. are indicted for Murder, and both plead Not guilty; and before Trial another Indictment is preferred for the same Fact against A. for Petty Treason, and B. for Murder, they must plead to the second Indictment; *autrefois Arraign* is not a Plea in this Case: but the Judges must take Care, that they do not undergo two Trials for the same Fact. *Case of Swan and Jeffreys*, 1752. *Foster* 104.]

[And therefore the Court may (by Consent of the King's Counsel, or without,) order the first Indictment to be quashed, and proceed on the second. *Ibid.*]

[The *St.* 1 *Ed.* 6. c. 12. and 5 & 6 *Ed.* 6. c. 11. (but not 7 *W.* 3. c. 3.) extend to Petit Treason, therefore there must be two Witnesses; the Witnesses, if living, must be

be examined in open Court. Depositions taken by the Coroner, or Informations before Justices of Peace, and certified to the Gaol Delivery, pursuant to Statute, whereon to ground a Conviction for Petit Treason; if the Party be living, though unable to travel, or kept out of the Way by Prisoners, are not sufficient. But in such Cases, a Man indicted for Petit Treason may be found Guilty of Murder. *Foster* 328, 337.

[Petit-Treason (with respect to the Number of Witnesses) stands singly on the Foot of the Statutes of *Ed. 6.* which are not repealed by 1 & 2 *P. & M.* which was intended in favour of the Subject, and not against him. And accordingly the Statutes of 32 *H. 8. c. 4.* 33 *H. 8. c. 20.* 33 *H. 8. c. 23.* as far as concerns Treasons committed in *England* and *Wales*, are considered as repealed by it; but 28 & 35 *H. 8.* for Trial of Treason committed on the High Seas, and 33 *H. 8.* as far as concerns Treason in Foreign Parts, are not repealed. *Foster* 237.]

As to the Indictment and Process upon it, *Vide Indictment* (A. &c.—J.)

The Indicttee may demur, or plead to the Indictment.

A Demurrer is a Confession of the Offence as alledged, and if the Indictment be sufficient, there shall be Judgment and Execution against the Prisoner. *H. P. C.* (W. 3) *plead.*

243. And now, by the *St. 7 W. 3. 3.* In High Treason, or Misprision, the Indictment, Process upon it, or Return may be quashed, before any Evidence given, upon Motion of the Prisoner or his Counsel, for Miswriting, Mispelling, false or improper Latin.

[If the Prisoner would avail himself of Defect in the Indictment by Miswriting, &c. tho' the Act requires only, that he should take his Exceptions before Evidence given in open Court; yet Practice has settled, that it shall be before Plea pleaded. And in *Vaughan's Case*, *Sullivan's Case*, and *Laver's Case*, the Court refused to hear such Exceptions after Plea; and though, in *Granborne's Case*, it was admitted after Plea, and in *Rookwood's Case* after Jury sworn, yet it was of Indulgence on a new Act. *Foster* 230.]

If he plead, he may confess the Indictment and plead Guilty. *St. P. C.* 142. *Vide Indictment*, (K.)

Or he may plead in Abatement; as, Misnomer, &c.

If he plead a Misnomer of the Surname, he ought to plead over to the Felony. *H. P. C.* 243.

If Misnomer of the Christian Name, he must give his true Name; and if the Attorney General confesses the Misnomer, the Indictment shall be quashed; but he may be immediately indicted by his true Name. *H. P. C.* 243.

Plea of Sanctuary is taken away by the *St. 21 Jac. Vide Abjuration*, (D.)

Or he may plead in Bar, As, *Autrefois acquit*, *autrefois convict*, or *attaint*. *St. P. C.* 105, 107. *H. P. C.* 244, 247. *Vide Indictment*, (L.)

A Pardon. *St. P. C.* 99. *H. P. C.* 252.

[A Capitulation on Surrender of a Town by Rebels, is no Defence at Law. *Townley's Case*, 1746. *Foster* 7.]

[Force, for fear of Houses being burnt or Goods destroyed, is no Excuse for joining and marching with Rebels; the only Force that doth excuse, is Force on the Person, and present Fear of Death, which must continue all the Time the Party remains with them. *M'Growther's Case*, 1746. *Foster* 13.]

Or the general Issue, Not Guilty. *St. P. C.* 151. a. *H. P. C.* 254. *Vide Indictment*, (L.)

[On Not Guilty pleaded, Prisoner may have the Benefit of any Thing tending to shew that his Case is not within the Act, empowering the King to grant Commissions to try Treasons in any County; as the Act of Union, that the private Rights of Natives of *Scotland* shall not be altered, except for the evident Utility of the Subjects within *Scotland*. *Kinloch's Case*, 2746. *Foster* 15. *Contra Willes C. J.*]

After Not Guilty pleaded and recorded, the Prisoner, *relictâ verificatione*, may confess the Indictment, *R. R. Kelt.* 11.

So, if he plead a frivolous Plea, and will say nothing more, the Court will give Judgment for Treason upon the *Nil dicit*. *R. Dy.* 300. b.

If there are several in the same Indictment some may be tried, others confess after Plea, others shall be outlawed. *Kek. 11.*

(W. 4.)
How the Evi-
dence shall be
given.

After Plea what Process shall be against the Jurors, *Vide in Enquest, (C. 1, &c.*
What Challenge, *Vide in Challenge, (B.—C. 1, 2.)*

By the *St. 1 Ed. 6. 12.* and *5 & 6 Ed. 6. 11.* No Person shall be indicted or convicted for Treason, or Misprision of Treason, unless accused by two sufficient and lawful Witnesses, or he willingly without Violence confess the same. So, by the *St. 1 El. 1.* for Offences by that Act.

And by the *St. 5 & 6 Ed. 6. 11.* The Accusers, if living at the Time of Arraignment, shall be brought in Person before the Party accused, and avow what they have to say to prove him guilty of the Indictment. So, by the *St. 1 El. 1.*

So, by the *St. 7 W. 3. 3.* No Person shall be indicted, tried, or attainted of Treason, whereby Corruption of Blood ensues or Misprision of such Treason, but by the Oaths of two lawful Witnesses to the same Overt Act, or one to one Overt Act and one to another Overt Act of the same Treason, unless without Violence in open Court he confess the same, or stand mute, or refuse to plead, or in Cases of High Treason challenge above Thirty-five of the Jury peremptorily.

[The Evidence of one Witness to an Overt-Act, and the Declaration of the Prisoner to others after he has surrendered, and is in a Prison appointed for the Rebel Officers, that he was a Lieutenant of the Rebels, is sufficient to convict; for this Declaration of the Prisoner is not a bare Confession after the Fact, but an Evidence of the Fact itself, viz. that he was a Lieutenant among the Rebels. *Barwick's Case, 1746. Foster 10, 243.*]

[Declarations of a Child of ten Years, before the Coroner, before a Justice, and to other Persons whilst in Gaol, are Evidence proper to be left to a Jury. *York's Case, 1748. Foster 70.*]

[A collateral Fact not tending to the Proof of the Overt-Act, may be proved by one Witness. *Per Holt C. J. Vaughan's Case, 5 State Trials. Foster 240. Smith's Case, 7 Ann. Willis's Case, 8 State Trials. Foster 242.*]

So, by the same Statute, if admitted to Trial after Outlawry for such Treason.

And if two Treasons of divers Species are in the same Indictment, one Witness to one, and another to the other Species of Treason, shall not be two Witnesses to the same Treason within the Intent of this Act.

And the Person so indicted, &c. shall be admitted to make Defence by Counsel, and by Witnesses on Oath.

And no Evidence shall be of any Overt Act not laid in the Indictment. Nor shall any be prosecuted for Treason, or Misprision done in *England or Wales*, except as to Assassination of the King's Person, unless the Indictment be found within three Years after the Offence committed.

But this Statute extends not to counterfeiting the Coin, Great Seal, Privy Seal, Sign Manual, or Privy Signet. To which Treasons neither does the *St. 1 & 2 Pb. & M. 10.* extend. *Vide Rastal, Treason 24.*

[Nor High Treason by *5 Eliz. c. 1.* concerning the Papal Supremacy, and by *18 Eliz. c. 1. 8 & 9 W. 3. c. 25.* and *15 & 16 G. 2. c. 28.* touching the Coin, *Foster 222.*]

[It extends to all Treasons working Corruption of Blood, created by subsequent Acts, tho' the Benefit of it is not saved by Special Proviso. *Foster 223.*]

[It extends also to such Treason as ordinarily worketh Corruption of Blood, if such Treason is committed on the High Seas, and the Proceeding is under *stat H. 8.* even supposing Corruption of Blood is not wrought in such Proceeding. *Foster 226.*]

[Evidence of Overt Acts of Treason after the Day laid in the Indictment, is good Evidence of the Overt Acts laid in the Indictment; the Time not being material, if the Treason is proved to be committed before the Bill is found. *Townley's Case, 1746. Foster 7. Ld. Balmerino's Case, 1746. Foster 9.*]

[Overt-Act not laid, may be given in Evidence, if it be a direct Proof of any of the Overt-Acts that are laid.]

[Thus the Prisoner's causing the Pretender's Manifesto to be printed and dispersed, or collecting the Excise by Pretender's Commission, is Evidence of assembling and

and marching in warlike Manner, to depose the King and set the Pretender on the Throne. *Deacon's Case*, 1746. *Foster* 9. *Wederbourn's Case*, 1746. *Foster* 22. *Rookwood's Case* *Lowick's Case*, *State Trials*.]

[And this, tho' it is of another Species of Treason. *Laver's Case*. *Foster* 245.]

[But if on Indictment for adhering, the Overt-Act laid is Cruising on the King's Subjects in Ship *A*. Cruising in Ship *B*. is not Evidence of it. *Vauban's Case*, 5 *State Trials*. *Foster* 246.]

[One Overt-Act must be proved in the County where all the Overt-Acts are laid, and then Overt-Acts done in another County may be given in Evidence. *Ibid.*]

[A Letter dated from a Place in the County where the Treason is laid, is sufficient Proof of an Overt-Act in that County. *Rex v. Hensley*, T. 31 G. 2. 1 B. M. 642.]

And by the St. 1 Ann. 9. All Witnesses on Trial for Treason, or Felony, shall give Evidence on Oath.

The Force of the St. 1 Ed. 6. 12. and 5 & 6 Ed. 6. 11. was not taken away by the St. 1 & 2 Ph. & M. 10. *H. P. C.* 262. *Dub. Kels.* 49, 18. *Vide* 2 *Jon.* 233. *H. P. C.* 208.

Testimony of Hearsay shall not be allowed in Treason, or Felony. *H. P. C.* 262.

[Papers found in the Possession of Defendant, and proved to be his Hand, may be read. *Rex v. Hensley*, T. 31 G. 2. 1 B. M. 642.]

But by the Common Law one Witness in Treason was sufficient. *Kels.* 49.

So now, by the St. 1 & 2 Ph. & M. 11. for Treason in counterfeiting the Coin. *H. P. C.* 262. *Kels.* 50.

So, in Treason for Clipping, &c. *R. 2 Jon.* 233.

So one Witness is sufficient in Petit Treason, or Felony.

So, since the St. 1, & 5 & 6 Ed. 6. and also since the St. 7 W. 3. one Witness is sufficient for one Overt Act, and another for another Overt Act of the same Treason. *Kels.* 9.

So the two Witnesses, who give Evidence for the Finding of the Indictment, are sufficient Witnesses upon the Trial. *Kels.* 18.

So, by the St. 1 & 2 Ph. & M. 13. and 2 & 3 Ph. & M. 10. Justices of Peace, before whom any is brought for Felony, shall take Examination of the Prisoner and such as bring him, of the Circumstances of the Fact, and certify them to the Justices of Gaol-Delivery, &c.

This Examination, subscribed by the Prisoner, shall be read upon the Trial as Evidence against him. *H. P. C.* 262.

So, the Information of any, taken by a Justice of Peace upon Oath, being proved by the Justice or his Clerk, if the Witness himself be dead, or beyond Sea. *H. P. C.* 263. *Semb. cont.* 2 *Jon.* 53.

So, a Deposition taken before the Coroner, if the Witness be dead, or beyond Sea. *R. 2 Jon.* 53.

So, in Treason, Confession of the Prisoner, upon Examination before a Justice of Peace, shall be Evidence against himself. *Kels.* 18.

Or, before a Privy Councillor, tho' he be not a Justice of Peace. *Kels.* 19.

So two Witnesses of his Confession upon such Examination are sufficient, without other Witnesses to prove the Treason, notwithstanding the St. 1 Ed. 6. and 5 & 6 Ed. 6. for the Words, *unless without Violence he confesses* &c. are intended of a Confession upon his Examination, tho' he deny it in Court. *R. Kels.* 18.

[Whether a Confession, and what Kind of Confession, whether to a Magistrate during Examination, or other Person having Authority (and what Authority) to take it, or to other Persons, shall be Evidence to convict, or for what Purpose, seems not well settled. *Gregg's Case*, *Francia's Case*, *Willis's Case*, *Vaughan's Case*, *Smith's Case*, *Barwick's Case*, &c. *Foster* 240. *et seq.*]

[The Rack or Torture is against Law, and cannot be justified by any Usage. It was first introduced into the Tower, temp. H. 6. practised to the end of Eliz. at least; proposed in Council on *Felton's Case*, but declared by all the Judges to be illegal. *Foster* 244.]

[The Reason given by Mr. Just. *Foster* 244. why it is enacted that no Evidence shall be admitted of any Overt-Act that is not expressly laid in the Indictment, is, lest the Prisoner should be surprized or confounded by a Multiplicity and Variety of Facts which he is to answer on the Spot; how far consistent with this Reason, or

with the Spirit and Intention, or even the Words of the Clause itself, the Practice, is, of admitting an Overt-Act not laid, to be given in Evidence of an Overt-Act laid, seems to deserve Consideration. The same may be said, in many Instances at least, of the Doctrine, that an Offence falling under one Branch of the Statute may be deemed an Overt-Act of a different Species of Treason; contrary to the opinion of Coke, and of Hale at first. Mr. Justice Foster observes, p. 246, that those concerned in State Prosecutions, out of their Zeal for the publick Service, sometimes in the Case of Treasons, step over a Rule grounded on the Principles of Natural Justice.]

(X) Judgment.

(X. 1.) In High Treason.

Vide Forfeiture, (B. 1, 2, &c.)

THE Judgment in High Treason shall be, that the Man be drawn, hanged, his Entrails taken out and burnt, his Head cut off, his Body quartered, and his Head and Quarters hanged up. *H. P. C. 268. Ca. Parl. 131.*

Quod secreta Membra amputentur, is also a necessary Part of the Judgment, but it need not be entred upon the Roll. *R. inter The King and Tucker, P. 6 W. & M. B. R. Skin. 442.*

The Judgment for counterfeiting the Coin is only to be drawn, and hanged. *H. P. C. 268.*

So for Clipping or Diminishing. *Dy. 230. R. 2 Jon. 233. 1 Vent. 254. Ray. 234.*

So the Judgment in Treason for a Woman, in Cases of the Coin, is to be drawn, and burnt. *H. P. C. 268.*

If any essential Part of the Judgment be omitted, the Judgment shall be reversed: As, *quod interiora ipso vivente comburentur. R. 4 Mod. 400. Ca. Parl. 136, 7.*

The Judgment for High Treason shall be given by the Chief Judge present, not by the Recorder. *Kel. 111.*

For Treason a Man forfeits all his Lands and Tenements, Goods and Chattels to the King. *Co. Lit. 41. a. 3 Inst. 211. Vide Forfeiture, (B. 1, 2.)*

Also his Wife shall lose her Dower, and his Blood is corrupted. *Co. Lit. 41. a. 3 Inst. 211.*

But the Blood is not corrupted, nor Dower lost, for Treason against the *St. 5 El. 11.* or *18 El. 1.* in the Case of the Coin.

Nor, for Treason against *5 El. 1.*

[The King may not only remit Part of the Judgment, but he may alter it in Mitigation, though not in Aggravation. Thus Ladies of Distinction have never been burnt, but beheaded, by Warrant from the Crown. *Foster 258.*]

As to Judgment in Petit Treason, *Vide Ante, (L. 3.)*

(X. 2.) Judgment, If a Man stand Mute.

In High Treason, if the Party stand mute, he shall have the same Judgment as if convicted. *H. P. C. 226. Dy. 205. a. 3 Inst. 217.*

So, in an Appeal. *H. P. C. 226.*

So, by the *St. 33 H. 8. 12.* for Treasons and Felonies within the Verge.

So if he be mute by the Act of God, he shall be tried and have Judgment, as if he had pleaded. *H. P. C. 225.*

So, after Conviction, if he stand mute, when asked, what he can say why there should not be Execution, he shall be executed. *H. P. C. 226.*

So, if he had formerly pleaded. *H. P. C. 225, 226.*

But in other Cases of Felony he shall have *Pain fort & dure*, viz. he shall be remanded to Prison, and being naked in a dark Place with his Hands and Legs extended, Weights shall be put upon his Body till he answer. *H. P. C. 227.*

A Man stands mute, where of Malice he will not plead to the Indictment. *H. P. C. 225.*

Or challenges above 35. *H. P. C. 226.*

If he speaks, but will not plead directly, or put himself upon the Country.
H. P. C. 226.

If he cut out his Tongue to disable his Speaking. H. P. C. 225.

[By Stat. 12 G. 3. c. 20. Person standing mute on Arraignment for Felony or Piracy shall be convicted, and have Judgment and Execution, &c. as if convicted by Verdict or Confession. This extends to America.]

(X. 3.) Judgment in Felony.

The Judgment in Felony, is *quod suspendatur per Collum quousque sit mortuus*, except Petit Larceny, where it is, *quod flagelletur*. H. P. C. 268, 269. 3 Inst. 211. Vide Forfeiture, (B. 3. &c.)

And the King, tho' he may pardon the Whole or any Part of the Judgment, cannot alter it to Beheading, or any other Death. H. P. C. 268. R. 12 Co. 130.

And the Court cannot alter the Punishment by Command of the King, or Consent of the Prisoner;

And therefore, where Felton convicted of the Murder of the D. of Bucks requested that his Hand might be cut off, and the King also desired it, the Court, could not do it. 1 Rusbw. 640.

[The King may alter the Judgment in Mitigation, tho not in Aggravation. Thus Persons of Distinction have for Ages past been beheaded for Felony by Warrant from the Crown, and nobody complained, or thought the Execution illegal. Thus it appears from the Register 165. a. F. N. B. 144. H. 4to Edit. 399. Stamf. 198. A. that Persons were beheaded for Felony, yet the Writ of Escheat alledged they were hanged. Thus by *articuli Cleri*, that Persons flying to Sanctuary and abjuring (a Privilege never allowed but in Felony) had been taken by Force, and hanged or beheaded. This is Part of the Common Law; for immemorial Usage, founded in Mercy, and never complained of, is sufficient to shew what is Common Law. Foster 268.]

But by the St. 4 Geo. 11. Any convicted for an Offence intitled to the Benefit of Clergy, may be sent to the Plantations for seven Years; and for a higher Offence may be pardoned, on Condition he be transported for fourteen Years.

[By St. 16 G. 3. c. 43. Instead of Transportation, Convicts may be set to hard Labour on the Thames or elsewhere for three or ten Years.]

[A Man may be transported for running Wool, by St. 4 G. c. 11. though he was not committed for want of Bail, and though the Information had not been delivered to him or the Turnkey. Rex v. Tomkins, in Sc. M. 1721. Bunb. 83.]

[By St. 8 G. 3. c. 15. If the King pardons capital Convict, on Condition of Transportation, and it is signified by Secretary of State to the Judge, he may make order for his immediate Transportation.]

For all Felony, in which there is Judgment to be hanged, his Blood is corrupted. Co. L. 391. b.

[By St. 2; G. 2. c. 37. Persons convicted of Murder shall be executed next Day but one after Sentence, (except it be Sunday) and shall be anatomised or hung in Chains; this shall be a Part of Sentence which shall be pronounced immediately, unless Cause. Till Execution he shall be kept alone in a Cell, and fed with Bread and Water only, unless allowed otherwise. Gaoler offending forfeits his Office and 20 l.

He forfeits his Goods and Chattles, his Lands and Tenements. Co. L. 391. a. 41. a. Vide Forfeiture, (B. 3. &c.)

The Goods and Chattles are forfeited by the Conviction. Co. L. 391. a.

The Lands and Tenements, not till Attainder. Co. L. 391. a.

And the Forfeiture, as to the *mesne* Profits, relates to the Judgment. Co. L. 390. b.

As to *mesne* Charges and Incumbrances, to the Time of the Offence alledged in the Indictment. Co. L. 390. b. Stamf. 192. a.

Unless it be in the Case of an Attainder by Outlawry upon an Appeal; for then it relates only to the Time of the Outlawry, for no Time is mentioned in the Writ of Appeal. Co. L. 390. b.

And the Felon shall live upon his Goods and Lands during his Life.

But

But in Petit Larceny he forfeits only his Goods. *Co. L. 391. d.*

So the Blood is not corrupted, nor Dower lost, in Felony contrary to the *St. 8 El. 3.* Of Exportation of Sheep a second Time; the *St. 31 El. 4.* Of Embezzlement of Ammunition, &c. the *St. 35 El. 1.* Of refusing Abjuration, &c. the *St. 1 Jac. 11.* Of Polygamy; the *St. 1 Jac. 12.* Of Witchcraft.

If a Statute saves the Descent to the Heir, the Blood is not corrupted; and if it saves the Corruption of Blood, the Inheritance is preserved to the Heir. *H. P. C. 8.*

(Y) Clergy.

(Y. 1.) When allowed.

THE Allowance of Clergy is a Privilege, which a Priest, or any other who by Possibility may be a Priest, may claim when arraigned for Felony, to be delivered to the Ordinary to make Purgation of the same Offence. *St. P. C. 123. C.*

And it commenced by the Canon Law, which does not allow a Clerk to be tried *coram Judice seculari*, and is confirmed by the *St. Art. Cleri*, and other Acts of Parliament. *St. 123. b. C. Kelt. 99, 100. Eq. Ca. 272. 2 Inst. 636.*

It was afterwards extended to Inferior Orders. *Kelt. 100.*

And afterwards, to all who read as Clerks, which was the Test, or Trial, whether they were Clerks or not. *Kelt. 101.*

And it shall be allowed to every one, who by Dispensation, or Possibility may be a Clerk; As, to a Man excommunicated. *H. P. C. 229. 11 Co. 29. b.*

One of the Greek Church. *H. P. C. 229.*

One who had abjured the Realm, after his Return. *H. P. C. 230.*

Or, had committed Sacrilege, if the Ordinary will claim him. *St. 123. D. 2 Inst. 114.*

So it shall be allowed in all Crimes, except High Treason, where it is not taken away by Statute. *2 Inst. 635. H. P. C. 230.*

And by the Common Law, it was to be allowed *toties quoties*, till the *St. 4 H. 7. 13. St. P. C. 135. d.*

So, since that Statute, to a Clerk *infra sacros Ordines*. *St. 135. D.*

And if a Statute creates a new Felony, Clergy shall be allowed in it, unless it be expressly ousted. *H. P. C. 230.*

And if Clergy is ousted by a Statute, the Indictment must pursue the Act. *H. P. C. 231.*

And taking it away from the Principal does not take it away from the Accessory, unless he be mentioned. *H. P. C. 231.*

When an Offence is within Clergy, it shall be allowed, tho' he be convicted by Verdict or Confession, tho' he stand mute, or challenge above thirty-five. *H. P. C. 231.*

(Y. 2.) When not.

But Clergy shall not be allowed to one, who by no Possibility can be a Priest: As, to a Woman, tho' she be a Nun. *St. 123. D. H. P. C. 229. 11 Co. 29. b.*

Nor to a Turk, Jew, or other Infidel. *H. P. C. 229. 11 Co. 29. b.*

Nor to a Man blind, or maimed. *St. 123. D. H. P. C. 229. 11 Co. 29. b.*

So a Man who had committed Sacrilege, shall not have his Clergy, if the Ordinary will not demand him; if he be arraigned for that or any other Crime. *St. P. C. 123. D. 11 Co. 29. b. 2 Inst. 114.*

So, by the *St. 4 H. 7. 13.* A Man not *infra Sacros Ordines* shall not be admitted to his Clergy, if once admitted to it, and he be eftsoun arraigned of any such Offence.

And therefore, to his Prayer of Clergy, it may be counterpleaded, that he formerly had his Clergy. *St. P. C. 135. B.*

Yet by the *St. 4 H. 7. 13.* the Court upon such a Counterplea shall give a Day to produce a Certificate, or Letters of his Orders.

By the *St. 34 & 35 H. 8. 3.* The Transcript of any Conviction, or Attainder upon an Indictment, &c. which ought to be made by every Clerk of the Crown, Clerk of the Peace, or Clerk of Assize into *B. R.* shall be as effectual as the Record itself.

So by the *St. 21 Jac. 6.* A Woman convicted by Confession or Verdict for Felony under the Value of 10 s. or as Accessory, in a Case where a Man shall be allowed his Clergy, shall for the first Offence be branded by the Gaoler in Court with a *T.* on the left Thumb.

And may be punished by Imprisonment, Stocks, Whipping, or House of Correction, not above a Year, as the Judge shall think fit.

By the *St. 3 & 4 W. & M. 9.* The Clerk of the Crown, or of the Peace, or of Assize, where Man (or Woman) hath been convicted, who once had Clergy, (for the Benefit of this Act, which allows a Woman to be burn't in the Hand where a Man shall have Clergy,) at the Request of the Prosecutor or any other shall certify a Transcript, briefly containing the Effect of the Indictment, Conviction, and Allowance of Clergy, Addition of Person, and Certainty of the Offence.

And such Certificate shall be Proof to the Judge, that the Person once had Clergy, or the Benefit of Clergy.

[In new Felonies by Statute ousting Clergy, where Aidors and Abettors are not named, yet if Terms are used well known to include them, they are ousted. So by 1 *Ed. 6. c. 12.* for Murder, and Highway Robbery. 18 *Eliz. c. 7.* Rape, Ravishment, and Burglary. Buggery, 25 *H. 8. c. 6.* 5 *Eliz. c. 17.* *Foster 357, 358.*]

[When the Statute takes away Clergy from the Offence generally, without other Circumstance, it is taken from the Offender under every Circumstance *Foster 358.*]

Clergy was not allowed in High Treason, by the Common Law. 11 *Co. 29.* (Y. 3.)
b. 2 *Inst. 150, 629, 634.* In High Treason.

Nor, in Sacrilege. 11 *Co. 29. b. 2 Inst. 150.*

But in all other Crimes it was allowed. 2 *Inst. 635.*

And by the *St. de Clero, 25 Ed. 3. 4.* All Clerks, secular or religious, convict for any Treason or Felonies, touching other Persons than the King, shall have Clergy.

But if convicted of any Species of High Treason tho' it does not relate to the Person of the King, Clergy is not allowable within this Statute. 2 *Inst. 636. H. P. C. 230.*

[All Treasons which in the Judgment of the Legislature have a direct Tendency to disturb the Peace of the Kingdom, are ousted of Clergy, as touching the *Royal Majesty of the King*; but Offences of a more private Nature, which, for their Odiousness or publick Example, are made Treason, and which do not touch the Person of the King or his Royal Majesty, are not ousted without express Words. *Foster 191.*]

By the *St. 23 H. 8. 1.* revived by the *St. 5 & 6 Ed. 6. 10.* (*Vide 11 Co. 30.*) The Principal in Petit Treason, convicted by Verdict, or Confession, is ousted of Clergy. (Y. 4.)
Vide H. P. C. 232. In Petit Treason.

[The Statute 23 *H. 8. 1.* is not revived, and the Statute 25 *H. 8. 3.* is not revived *in toto*, by 5 & 6 *Ed. 6.* *Foster 330.*]

And by the *St. 25 H. 8. 3.* Tho' he stand mute, challenge above twenty, or do not answer directly.

So, in an Appeal, if he be convicted by Verdict, or Confession, but not otherwise. *H. P. C. 232.*

And by the *St. 3 & 4 W. & M. 9.* Where a Person is excluded Clergy when convicted by Verdict, or Confession, he shall lose it if he stand mute, will not answer directly to the Felony, or challenge peremptorily above twenty.

By the *St. 23 H. 8. 1.* and 4 & 5 *Pb. & M. 4.* An Accessory before, maliciously, is ousted of his Clergy. *H. P. C. 232. 11 Co. 30. a.*

[The 1 *Ed. 6.* ousts of Clergy Persons guilty of Petit Treason under the Name of wilful Murder. *Foster 329.*]

[It is the only Statute which ousts of Clergy Persons in Holy Orders guilty of Petit Treason. *Foster 330.*]

(Y. 5.)
In Murder.

By the *St. 23 H. 8. 1. 25 H. 8. 3. 1 Ed. 6. 12.* In Murder of Malice premeditated, in all Cases, the Principal is ousted of Clergy.

And by the *St. 4 & 5 Pb. & M. 4.* An Accessory before, of Malice.

And by the *St. 1 Jac. 8.* He who stabs one having no Weapon drawn, nor first Striking, tho' no Malice forethought.

So, if he who stabs, struck first, tho' the other struck him before he was stabbed. *R. per 10 J. Jon. 340.*

(Y. 6.)
In Arson.

By the *St. 23 H. 8. 1.* In Arson of an House or Barn with Corn, the Principal is ousted of Clergy, if convicted by Verdict, or Confession. *11 Co. 30. Sav. 46. cont. (Vide H. P. C. 233.)*

And by the *St. 25 H. 8. 3.* If he stand mute, answer not directly, or challenge above twenty. *(Vide H. P. C. 233. 11 Co. 30. b.)*

And by the *St. 4 & 5 Pb. & M. 4.* An Accessory before, of Malice.

[The *St. 23 H. 8.* and *25 H. 8.* ousted Arson, but *1 Ed. 6.* restored Clergy, but *4 & 5 P. & M.* taking away Clergy from the Accessory before, does by necessary Consequence take it from the Principal. *Foster 331, 333.*]

But upon an Outlawry, he shall have Clergy. *H. P. C. 233. (Vide 11 Co. 30. b.)*

(Y. 7.)
In Burglary.

By the *St. 23 H. 8. 1. and 1 Ed. 6. 12.* A Burglar, where any Person is within the House and put in Fear, convicted by Verdict or Confession, or not answering directly, or standing mute, and by the *St. 25 H. 8. 3.* challenging above twenty, is ousted of Clergy.

By the *St. 5 & 6 Ed. 6. 9.* A Burglar in a Dwelling House, or in a Booth, or Tent in a Fair, or Market, any Person being within tho' not put in Fear, is excluded Clergy.

By the *St. 18 El. 7.* A Convict of any Manner of Burglary by Verdict, or Confession, or Outlawry, is excluded Clergy.

By the *St. 3 & 4 W. & M. 9.* If he stand mute, answer not directly, or challenge above twenty.

And by the same Statute, an Accessory before is excluded Clergy.

By the *St. 12 Ann. 7.* Any who steals Money, or Goods of 40s. Value in a Dwelling House, or Outhouse belonging;

Or enters an House of Intent to commit Felony, without breaking; or commits Felony in an House and breaks it in the Night to get out, is excluded Clergy.

(Y. 8.)
In Robbery.

By the *St. 23 H. 8. 1. and 1 Ed. 6. 12.* A Convict by Verdict, or Confession for a Robbery in or near an Highway, is ousted of Clergy.

And by the *St. 25 H. 8. 3.* If he stand mute, answer not directly, or challenge above twenty.

And by the *St. 4 & 5 Pb. & M. 4.* An Accessory before.

If an Indictment says, *in quadam via pedestri*, the Offence is ousted of Clergy. *H. P. C. 242.*

(Y. 9.)
In Larceny,
From the Person

By the *St. 8 El. 4.* A Person convicted on An Appeal or Indictment, by Verdict, Confession, or Outlawry, for stealing any Money or Goods from the Person of another, privily and without his Knowledge, or standing mute, not answering directly, or challenging above twenty, loses the Benefit of Clergy.

[Only the Person stealing, not he who is present, aiding and abetting, is ousted. *Foster 356.*]

(Y. 10.)
Within an
House.

By the *St. 23 H. 8. 1.* A Convict by Verdict, or Confession of robbing any Person in a Dwelling House, the Owner, his Wife, Children, or Servants within and put in Fear, is excluded Clergy.

So,

So, by the *St. 25 H. 8. 3.* If he stand mute, answer not directly, or challenge above twenty.

By the *St. 5 & 6 Ed. 6. 9.* A Convict by Verdict, or Confession of robbing in a Dwelling House, or in a Booth or Tent in a Fair, or Market, the Owner, Wife, Children, or Servants within, tho' not put in Fear, is excluded Clergy.

There must be an actual Breaking, as well as a Robbery. *H. P. C. 237. 8.*

By the *St. 3 & 4 W. & M. 9.* A Convict by Verdict, or Confession, of robbing a Dwelling House, any Person therein and put in Fear, or standing Mute, not answering, or challenging above twenty, is excluded Clergy.

So, by the *St. 3 & 4 W. & M. 9.* If he rob in a Dwelling House, any Person therein, tho' not put in Fear.

By the *St. 4 & 5 Ph. & M. 4.* and *3 & 4 W. & M. 9.* An Accessory before to such Robbery in a Dwelling House is excluded Clergy.

By the *St. 39 El. 15.* and *3 & 4 W. & M. 9.* A Convict in any Case for stealing Goods to the Value of 5 s. in a Dwelling House, Shop, Warehouse, or Outhouse thereto belonging in the Day-time, or standing mute, not answering, or challenging above twenty, is excluded Clergy.

So, if he takes Goods of such a Value, tho' he does not remove them out of the House; for the Statute did not intend to alter the Offence. *R. 16 Car. 2. Kelt. 31.*

[A. and B. indicted on 39 *Eliz.* set up a Ladder against Window, A. opens it, gets in, Steals; B. stands on the Ladder in View of A. sees him in the Chamber, assists in the Robbery, has a Share of the Booty, but does not enter the House; A. has not, and B. has his Clergy; for it must be a Stealing in the House. *Foster 356.*]

[But by 3 & 4 *W. & M.* Aiders and Abettors under this and under 5 & 6 *E. 6.* are ousted. *Foster 356.*]

[Whatever Kind of Entry or Breaking is Burglary at Common Law, will bring a Man within Statute of *Ed. 6.* and 39 *Eliz. c. 15.* as to House-breaking and Larceny in the Day-time, and nothing short of it will. *Per Foster J. Foster 108.*]

[Breaking Chests, or even Fixtures which merely supply the Place of Chests, not within those Statutes, *Semb. Per Foster. Ibid.*]

By the *St. 10 & 11 W. 3. 23.* A Convict, &c. for stealing Goods to the Value of 5 s. by Night or Day in any Shop, Warehouse, Coach-house, or Stable feloniously, tho' no actual Breaking and tho' no Person there to be put in Fear, or standing mute, &c. or any Accessory before, is excluded Clergy.

[A common Warehouse by the Water-Side, where Merchants usually lodge Goods for Exportation till they have Opportunity of putting them on board, is not within the *stat. 10 & 11 W. 3. c. 23.* for it must be a Shop or Warehouse where such Goods as are stolen are usually exposed to Sale. *Howard's Case, 1751. Foster 77.*]

[If those Places are broken open at the Time of the Larceny, it is not within the Statute, which is for Goods privately stolen, which excludes all Force. *Semb. per Foster J. Ibid.*]

[Money is not within the Act 10 & 11 *W. 3. Ibid.*]

[Only Goods, such as are usually lodged there. *Ibid.*]

[By 24 *G. 2. c. 45.* Stealing feloniously from a Ship, &c. or a Wharf or Key, on a navigable River, &c. is ousted of Clergy.]

[But Money (even Portugal Money, not current by Proclamation) is not within this Act. *Grime's Case, 1752. Foster 79.*]

By the *St. 1 Ed. 6. 12.* and 2 & 3 *Ed. 6. 33.* A Convict by Verdict, or Confession, for stealing any Horse, Gelding, or Mare, or standing mute, or not answering directly, is ousted of Clergy.

(Y. 11.)
In Horse
stealing.

[A Person knowingly receiving a stolen Horse, is not ousted. *Per all the Judges, P. 2 Ann. Foster 373.*]

By the *St. 18 El. 7.* A Person convicted by Verdict, Confession, or outlawed for a Rape, is excluded Clergy.

(Y. 12.)
In Rape, and
Forcible Mar-
riage.

And by the *St. 3 & 4 W. & M. 9.* If he stand mute, answer not directly, or challenge above twenty.

By

By the *St. 39 El. 9.* A Convict for taking a Woman contrary to the *St. 3 H. 7. 2.* Procurers and Accessories before are ousted of Clergy; or if they stand mute, answer not directly, or challenge above twenty.

(Y. 13.)
In Buggery.

By the *St. 25 H. 8. 6.* (revived by the *St. 5 El. 17.*) A Convict by Verdict, Confession, or outlawed for Buggery, is ousted of Clergy.

And by the *St. 3 & 4 W. & M. 9.* If he stand mute, answer not directly, or challenge above twenty.

(Y. 14.)
Where the
Party is in-
dicted in a
foreign Coun-
ty.

By the *St. 25 H. 8. 3.* (revived by the *St. 5 & 6 Ed. 6. 10*) and by the *St. 3 & 4 W. & M. 9.* A Convict, standing mute, not answering directly, or challenging above twenty, on an Indictment in a foreign County for Felony, is excluded from Clergy; if on Evidence it appears, the Felony was done in such Manner, as would have ousted him of Clergy, if the Indictment had been in the County where done.

(Y. 15.) The Effect of Clergy being allowed.

By the Common Law, after Clergy allowed, the Party was delivered to the Ordinary to make Purgation, or without Purgation. *H. P. C. 240. 5 Co. 110. a.*

But by the *St. 18 El. 7.* When he had his Clergy and is burn't in the Hand, according to the *St. 4 H. 7. 13.* he shall not be delivered to the Ordinary, but be discharged; unless the Judge think fit to detain him in Prison, as he may, not exceeding a Year.

By the *St. 21 Jac. 6.* For Felony under the Value of 10*s.* and by the *St. 3 & 4 W. & M. 9.* in any other Case, where a Man is allowed Clergy, a Woman shall not be hanged, but suffer burning in the Hand, and Imprisonment not exceeding a Year, in the same Manner as a Man should.

By the *St. 28 H. 8. 1.* (Continued and made perpetual by the *St. 32 H. 8. 3.*) Persons in Holy Orders, who claim the Benefit of Clergy, shall be used as others.

By the *St. 10 & 11 W. 3. 23.* Every Person, who hath the Benefit of Clergy, instead of being burn't in the Hand, shall be burn't with the usual Mark, in the left Cheek nearest the Nose, before the Judge in open Court, who is to see it strictly executed.

By the *St. 1 Ed. 6. 12. & 14.* In Cases, where Clergy is not restrained, or where it is restrained by that Act, (unless for Murder, or wilful Poisoning,) a Peer shall be deemed as a Clerk convict, tho' he cannot read, and without burning in the Hand.

If a Clerk was delivered to the Ordinary without Purgation, to make Purgation; till Purgation made, he could not take Goods to his own Use. *5 Co. 110. a.*

But now, when he has Clergy, and is burn't in the Hand, he is capable of taking Goods afterwards to his own Use; for the *St. 18 El. 7.* is tantamount to a Pardon. *R. 5 Co. 110. a.*

So, if the Burning in the Hand be pardoned. *5 Co. 110. b.*

And the King may pardon the Burning in the Hand as well upon an Appeal as an Indictment. *R. 5 Co. 50. b.*

(Y. 16.) At what Time granted.

Clergy is not usually granted till an Inquest taken for the Felony; for that is more for the Advantage of the King, and the Party. *H. P. C. 239. 2 Inst. 164.*

But it may be allowed under the Gallows. *H. P. C. 239, 240. Dy. 205.*

Where Judgment of *Paine fort & dure* is given. *H. P. C. 239.*

So, if Clergy was prayed, and allowed, and *Non legit* entred upon the Record, it may afterwards be allowed; and if he reads, the first Entry will be void. *R. Dy. 205. H. P. C. 240.*

It may be allowed in Discretion, tho' he do not challenge it. *H. P. C. 239.*

It may be allowed in B. R. where the Record is removed thither before Clergy allowed by the Justices of Gaol-Delivery. *R. 1 Sal. 61.*

It may be allowed, tho' the Party does not pray it, but pleads a Pardon, &c. which is disallowed. *Kelk. 29.*

The Judge is the Person, who shall judge, when Clergy shall be granted. *H. P. C. 240.*

And, when he reads; for the Ordinary is only the Minister. *H. P. C. 240. Kelk. 28, 51.*

And tho' the Ordinary allows that he reads, the Judge may say otherwise. *Kelk. 28.*

And if the Ordinary allows it, when he does not read, he may be fined. *Kelk. 28, 51.*

(Z) Seizure of a Felon's Goods.

IF a Man be indicted for Felony, the Goods of the Indicttee may be seized for the King by the Sheriff, &c. and inventoried, and the Town shall be charged with them. *3 Inst. 228.*

But before Indictment, they cannot be seized or inventoried. *3 Inst. 229.*

So, after Indictment, they cannot be seized and carried away, before Conviction, or Attainder. *3 Inst. 229.*

So, before Conviction or Attainder, the King cannot grant those Goods to another. *3 Inst. 229.*

By the *St. 1 R. 3. 3.* If a Sheriff, &c. or other, take or seize the Goods of any arrested or imprisoned, before Conviction, or Attainder, or before the Goods be otherwise lawfully forfeited, he shall forfeit double the Value of the Goods so taken, to the Party grieved.

And this extends to Money as well as other Goods. *R. Ray. 414.*

So, before Conviction, the Felon may make a Sale *bonâ fide* for a valuable Consideration; for the Property remains in him. *R. Skin. 357, 358.*

Yet if the Felon, after Seizure of his Goods by the Sheriff makes a Sale, in Trust for his Son, and is afterwards convicted; the Sale will be fraudulent by the Common Law, and void, as to the King. *R. Skin. 358.*

(A. 2.) Restitution to the Party robbed.

By the Common Law, the Plaintiff in an Appeal of Robbery, shall have Restitution of the Goods stolen.

So, by the *St. 21 H. 8. 11.* If a Felon be indicted, and afterwards attainted by the Evidence of the Party robbed, or the Owner of the Goods, or of any other by his Procurement, the Party robbed or Owner shall be restored to the Goods or Money, and the Justices of Gaol-Delivery, may award Writs of Restitution from Time to Time, as in the Case of an Appeal.

And the Owner shall have Restitution, tho' his Servant was robbed. *Stamf. 167.*

Tho' he does not make fresh Pursuit. *Stamf. 167.*

Tho' the Goods are sold in Market Overt. *Kelk. 48. Dub. Kelk. 35.*

Or waived, &c. *Kelk. 49.*

But he shall have Restitution only for the Goods mentioned in the Indictment. *Kelk. 49.*

[By *stat. 25 G. 2. c. 36.* Advertising a Reward for Things lost or stolen 50 *l.* forfeiture each, on Advertiser and Printer.]

JUSTICES OF PEACE.

(A. 1.) How constituted.

NONE but the King can make Justices of Peace. *Vide Dalt. 1, 10.* (Edit. 1727.)

And the King cannot grant a Power to another to make them. 20 H. 7. 8.

Neither can a Man prescribe to have such a Power. *Co. L. 114. Per Brian and Pigot, Bro. Peace 18.*

By the *St. 27 H. 8. 24.* No Person shall have any Power to make any Justices of Eyre, Affise, Peace, or Gaol-Delivery, but all shall be made by Letters Patent in the Name and Authority of the King or his Heirs, in all Counties, and other Places.

[* Provided. that Counties Palatine, Boroughs, &c. which have Power to have Justices, enjoy the said Authority. *Vide Post, (A. 5.)*]

(A. 2.) By Tenure.

But by the Common Law, a Man might have Lands by Tenure, to find *tot Custodes Pacis* in such a Place. *Co. L. 106. a.*

(A. 3.) By Election.

So, by the Common Law, a Writ went to a Man to make him Conservator of the Peace; as 49 H. 3. *Lamb. l. 1. c. 3.*

Or a Writ went to the Sheriff to elect *in pleno Comitatu unum de probiorum et potentiorum Comitatus sui in Custod Pacis*; and thereupon another Writ to the Bailiffs to summon the Freeholders to elect, &c. 2 *Inst. 174. Lamb. l. 1. c. 3.*

And another Writ to the Person elected, *quod ad hoc diligenter intendat.* *Lamb. l. 1. c. 3.*

(A. 4.) By Office.

So, by the Common Law, a Man might be Conservator of the Peace by his Office: As, the Chancellor, Treasurer, High Steward, Constable, and Marshal, Master of the Rolls, and every Justice of B. R. throughout the Kingdom. *Dalt. 1.*

The Justices of C. B. and Barons of the *Exchequer* in their several Courts. *Dalt. 2.*

So, Justices of Affise and Gaol-Delivery. *Dalt 2.*

So, the Steward of a Turn, Leet, and Court of Piepowders. *Dalt. 2.*

So, the Steward of the Marshalsea.

So, the Constable of the Household, within the King's House.

So, a Sheriff, Coroner. *Dalt. 3.*

Constable, and Petit Constable, within his Precinct. *Dalt. 3.*

(A. 5.) By Charter.

So the King by Charter, &c. may grant to a Mayor, Bailiffs, &c. to be Conservators of the Peace, within their City, Borough, &c. *Bro. Commission 5. Vide Post, (A. 6.)*

And such Justices are not determinable at the Will of the King. *Bro. Commission 5.*

All those that have been Mayors, and the three Senior Aldermen. *Quo Warr. 10. Vide London, (K. 6.)*

And that other Justices of the County *non se intromittant*, &c. 20 H. 7. 6, 7. *Bro. Patent 111. Cromp. 7. 8. 2 Mod. Ca. 361.*

But a Grant, *quod Justic' de Com'* or other Minister *non se intromittant sub pœna*, is void. *R. 1. And. 297.*

By

By the St. 27 H. 8. 24. Justices of Peace, &c. shall be made by Letters Patent of the King; Provided, that Counties Palatine, Boroughs, &c. which have Power to have Justices, enjoy the said Authority. *Vide Ante*, (A. 1.)—*Post*, (A. 6.)

(A. 6.) By Commission.

By the St. 1 Ed. 3. 16. Good Men and lawful, no Maintainers of Evil, nor Barretors, shall be assigned to keep the Peace.

By the St. 18 Ed. 3. 2. Two or three of the best Reputation in the Counties shall be assigned by the King's Commission.

And by the St. 2 & 3 Pb. & M. 18. A Commission to Justices of Peace in a Borough, &c. shall not be superseded by a subsequent Commission to Justices of the County.

Justices of Peace, by the St. 1 Ed. 3. 16. ought to be, good Men and lawful, no Maintainers of Evil, nor Barretors.

(A. 7.)
Who may be
constituted.

By the St. 18 Ed. 3. 2. Of the best Reputation in the Counties, (*meults vailantz* most substantial.)

By the St. 34 Ed. 3. 1. In every County there shall be assigned one Lord, and with him three or four of the best Quality (*meultz vauces* the most worthy or valiant) in the County, with some learned in the Law.

By the St. 12 R. 2. 2. The Chancellor, &c. shall be sworn not to make Justices of Peace for Gift, Brocage, Favour or Affection, nor any, who by him himself, or other, privily or openly, sues to be in Office, but the best and most lawful Men, and sufficient.

By the St. 13 R. 2. 7. Justices of Peace shall be of the most sufficient Knights, Esquires, and Gentlemen of the Law in the County.

By the St. 2 H. 5. 5. *Seff.* 2. They shall be of the most sufficient, dwelling in the County not taking in Foreigners, unless Lords and Justices of Assise. So, *c.* 4. *Seff.* 1. Those of the *Quorum* were to be resident in the County, (except Lords Justices of the one Bench or the other, Ch. Baron, Serjeants, and King's Attorney.)

By the St. 18 H. 6. 11. None shall be a Justice of Peace who hath not 20 *l.* *per Annum*; and if such, in a Month after Notice of the Commission, give not Notice to the Chancellor, that he may put another in his Room, or act as a Justice, he shall forfeit 20 *l.* and be put out of the Commission; except in Towns corporate, or where there are not others sufficient.

[By *stat.* 18 G. 2. *c.* 20. No Person is capable of being a Justice of Peace, who has not 100 *l.* *per Ann.* in Lands, &c. in Possession, or 300 *l.* in immediate Reversion or Remainder, and who shall not make Oath of it at the Quarter-Sessions before he acts, on Penalty of 100 *l.* the Proof to lie on Defendant; and he must specify any Lands he intends to insist on (which are not mentioned in his Oath) at Delivery of Plea; and if they are liable to Incumbrances jointly with other Lands are not sufficient. If Plaintiff discontinues or is nonsuited, Defendant shall have Treble Costs. Only one Penalty of 100 *l.* shall be recovered for any Offence prior to the Action, and no subsequent Action brought for any Offence prior to the first Action, and it must be commenced within six Months after the Offence.]

[This Act does not extend to Cities, &c. having Justices; nor to Peers or Lords of Parliament, Privy-Counsellors, Judges, Justices of Great Sessions for *Chester* or *Wales*, or the Heir-apparent of a Lord of Parliament, or of any qualified to be Knight of a Shire; nor to the Officers of the Board of Green Cloth within the Verge, nor the Commissioners of the Navy, nor Under-secretaries of State nor Secretary of *Chelsea* College, where they used to be Justices; nor to Heads of Colleges in the Universities, or the Vice-Chancellor, or the Mayor of *Oxford* or *Cambridge*, with respect to the Counties of *Oxford*, *Berks* and *Cambridge*.]

[By *stat.* 1 G. 3. *c.* 15. Justice who has once qualified need not sue out *dedimus Potestatem* on a new Commission, but shall take the Oaths before the Clerk of the Peace, and sign a Roll containing them.]

[By *stat.* 7 G. 3. *c.* 9. They need take them but once in one King's Reign]

[By

[By *Stat. 9 G. 3. c. 30.* The Commissioners of the Navy may act as Justices in all Things relating to Forgery, &c. to receive Seamen's Wages, &c. or to embezzling Naval Stores.]

(A. 8.)
When their
Authority de-
termines.

The Authority of Justices of Peace appointed by Commission determines by the Death or Resignation of the King. *Dy. 165. Bro. Commission 19, 21.*

Dalt. 11.

By Writ under the Great Seal. *Dalt. 11.*

By *Supersedeas*. *Dalt. 11.*

But that only suspends their Authority; for it may be revived by a *Procedendo*. *Bro. Commission 13. 12 Aff. 21, (in a Commission of Oyer and Terminer.) Dalt. 11.*

By the Coming of the Justices in *Eyre* or *B. R.* into any County, and Proclamation made thereof. *Bro. Commission 9, 10.*

By a new Commission of the Peace. *10 Ed. 4. 7. a. Bro. Commission 6. 24.*

Tho' such Commission be only for a present Turn. *Bro. Commission 7.*

Or, to one Justice only for his Life. *Bro. Commission 11.*

Or, to some in a particular Town, or Liberty; this determines the Authority of the Antient Justices in that Liberty, tho' there be not a Clause, *quod alii Justiciarii se non intromittant, Per Curiam, præter Choke, 10 Ed. 4. 7. a. Cont. per Fineux, 20 H. 7. 8. Bro. Commission 20 acc.*

But if there be a Clause, *ita quod Justiciarii de Com se non intromittant, Fineux acc. 20 H. 7. 8.*

But if the new Commission is void; it does not determine the former; As, if it be granted to Persons not in *Rerum natura*. *Bro. Commission 6.*

A Commission to hear and determine Felonies does not determine a Commission of the Peace, as to the Peace. *Bro. Commission 8.*

Nor a Commission of Gaol-Delivery; for they are consistent. *Bro. Commission 24.*

By the *St. 2 & 3 Ph. & M. 18.* A Commission to a County, does not determine a Commission for a City or Town Corporate within the same County.

And a new Commission to others within a Town, does not determine the Authority of the Mayor and Commonalty, who are Justices of Peace by Grant to them and their Successors within the same Town. *Bro. Commission 5.*

By the *St. 1 Ed. 6. 7.* A Justice of Peace shall not lose his Authority by being made a Duke, Archbishop, Marquis, Earl, Viscount, Baron, Bishop, Knight, Justice of either Bench, Serjeant at Law, or Sheriff.

After a new Commission, an Act by a Justice of Peace in the former Commission is valid, till Notice specially given to him. *Bro. Commission 2.*

Or, the new Commission be read at the Sessions, Assises, or in full County, or a Sessions held by Force of it. *Bro. Commission 6, 14, 18.*

For Notice to one Justice is not sufficient for others. *Bro. Commission 2.*

[The Power of Chancery extends only to putting them in, but has no Right to punish them afterwards for Mal-behaviour; the Redress is to move *B. R.* for Information, and afterwards the Complainants may apply to Chancery to turn them out of Commission. *Ex parte Rook H. 1736. 2 Atkyns 2.*]

[If Jurisdiction is fully attached in Justices by the requisite Proceedings of all Parties under an Act of Parliament, but the Matter is not determined but adjourned to a future Day before which the Act is repealed, no Jurisdiction remains with the Sessions, and they cannot proceed. *Rex v. Justices of London, H. 4. G. 3. 3 B. M. 1456.*]

(B. 1.) The Authority of Justices of Peace.

COMMISSIONERS of the Peace in the County at large, have all that Authority, which by their Commission, or by any Statute, is given to them. *Vide Dalt, 20, 21.*

Justices within a Corporation, have the Authority granted by their Charter, or any Statute, to Justices of Cities, Boroughs, and Towns Corporate.

The

[The Crown may grant to any City to have Justices of their own within themselves, and exclude the County Justices from intermeddling in the ordinary Business of Justices of Peace. *Talbot v. Hubble*, T. 14 G. 2. *Str.* 1154.]

[In such Case the Act of the County Justices will be void, and not merely a Breach of the Franchise. *Ibid.*]

[So where a City has an exclusive Commission (as *New Sarum*) the County Justices cannot act in Excise-Matters within the City, though *stat.* 12 G. 2. c. 23. gives Jurisdiction in them to Justices residing near the Place. *Ibid.*]

A Justice of Peace has no Authority of any Offence committed out of his Borough, or County. *Vide Dalt.* 24.

Unless it be Felony, or Breach of the Peace; for then he may secure the Offenders.

Or he be specially enabled by Statute to do it.

But such Act out of his Precinct is void.

[He may commit a Person for an Act which is Felony by the *Irish* Law, in order to his being sent over there to be tried. *Rex v. Kimberley*, M. 3. G. 2. *Str.* 848.]

[Two Justices may take a Recognizance for the Appearance of one charged with Felony on the High Seas at the Sessions of Admiralty, and the Recognizance may be estreated into the Exchequer. *R. v. Muilman*, H. 6 G. 3. *Parker* 241.]

A Justice of Peace, out of his Borough or County, cannot do an Act of Jurisdiction of a Thing within his Precinct. *R. Cro. Car.* 213.

But a meer Examination, if he exercise no Jurisdiction, he may take, being out of his Precinct. *R. Cro. Car.* 213.

As, 'an Examination of a Person robbed, upon the *St.* 27 *El.* *Cro. Car.* 213.

The Authority of a Justice of Peace is to be used *secundum vim, formam, & effectum Statuti*,

And if a Statute refers a Matter to his Discretion, it ought to be *sana Discretio* conformable to Law and Reason. 4 *Co.* 100. a.

If a Thing be referred to the next Justice, others without him cannot intermeddle. *Per Conc.* 1 *Sand.* 263.

But others may join with him. *R. Sal.* 477.

So, if any Authority is given to one Justice, two or more may execute it. *Dalt.* 25.

But if given to two, one alone cannot execute it. *Dalt.* 25.

If a Statute gives Authority to Justices of Peace to make a Conviction, the Conviction must be exactly pursuant to the Statute.

So Justices of Peace are confined to Offences in a Statute named in their Commission, or which concern the Peace of the Kingdom in general; but cannot proceed for an Offence against a Statute, which creates a new Offence, not named in the Commission.

[They (or the Quarter-Sessions) have no Authority in new created Offences, but by express Words. *Rex v. James*, P. 19 G. 2. *Str.* 1256.]

Or, by which no Jurisdiction is given to Justices of Peace: As, they cannot take an Indictment upon the *St.* 2 & 3 *Ed.* 6. 4. *R. 4 Mod.* 51.

So they cannot take an Indictment upon a Penal Statute, which does not give them Jurisdiction: As, upon the *St.* 1 & 2 *Pb. & M.* 11. for using more Looms than one, when he does not dwell in a City or Borough. *R. 4 Mod.* 379.

Upon a *St.* 1 & 2 *Pb. & M.* 7. for selling Wares in a Corporation being a Foreigner, out of a Fair, &c. *R. 5 Mod.* 149.

Nor, upon the *St.* 5 *El.* 14. forging a false Deed. *R. Cro. El.* 87. *Per* 3 *J.* *Popb. dub. Cro. El.* 601. *R. 9 Co.* 118. b. *Vide Post.* (B. 3.)

Nor upon the Statute of Usury. *R. Sal.* 680.

So they cannot take an Indictment for an Offence at Common Law, not named in the Commission; for the general Commission *de omnibus aliis Transgressionibus, &c.* must be intended of other Offences intrusted to their Cognisance by the several Statutes which created or enlarged their Power: And therefore, they cannot take an Indictment for Perjury at the Common Law. 1 *Sal.* 406.

Nor for Forgery. *R. 1 Salk.* 406.

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But

But an Order of Justices, tho' it be not pursuant to the Authority, being upon a Matter within their Jurisdiction will not be absolutely void, till it be avoided: And therefore, in an Action upon a Bond to perform it, if the Defendant pleads, *no Order made*, and the Plaintiff shews a defective Order, upon which the Defendant demurs, there shall be Judgment for the Plaintiff. *R. Sal. 674.*

[By *stat. 16 G. 2. c. 18.* Justices may act in relation to the Poor, Vagrants, Highways, Parochial Taxes, Levies or Rates, though rated or chargeable in the Place: But not on an Appeal.]

By *stat. 24 G. 2. c. 44.* and *30 G. 2. c. 24.* No Writ shall be sued against a Justice for any thing done in Execution of his Office without a Month's Notice, and he may tender Amends, and plead it in bar with other Plea; or may pay Money into Court. Evidence shall not be given of any Cause of Action, but what is contained in Notice.]

[No Action shall be brought against a Constable for any Thing done in Obedience to Justices Warrant, unless he refuse to shew it; and if Action is brought against him without the Justice, or with the Justice, and the Warrant is proved, Jury shall find for Constable, notwithstanding Defect of Jurisdiction in Justice.]

[By *stat. 24 G. 2. c. 55.* If the Offender escapes, or is out of the Jurisdiction of the Justice granting Warrant, Justice in another County shall indorse, and the Offender shall be brought before him or other Justice of that County, if the Offence is bailable, and Offender will give Bail to appear at Assizes or Sessions where Offence committed, Justice shall bail him, and deliver Recognizance and Examination to Constable, who shall carry them to the Clerk of Assize or Peace.]

[Justice indorsing Warrant is not liable to Action, but Justice granting it is.]

[By *stat. 26 G. 2. c. 14.* Justices Clerks shall take no Fees, but what shall be allowed by Quarter-Sessions, and ratified by Judges of Assize; a Table of Fees to be deposited with Clerk of Peace, and Copy hung in the Room where Quarter-Sessions are held. Clerk taking more forfeits 20 *l.*]

[By *stat. 26 G. 2. c. 27.* No Act or Order of two Justices shall be vacated for want of *quorum unus* expressed.]

[By *stat. 27 G. 2. c. 20.* Justices in Warrant of Distress shall direct when Goods shall be sold, between four and eight Days.]

[Officer may deduct reasonable Charges, and return Overplus to the Owner.]

[This extends not to the Acts for Quakers Tithes.]

[By *stat. 7 G. 3. c. 21.* All Acts done by two Justices qualified to act in Cities, Liberties, &c. are good, though neither of them of the *quorum*.]

[By *stat. 9 G. 3. c. 20.* They are authorized in Quarter-Session, on Presentment of Grand Jury at Assize, to order Shire-hall, &c. to be repaired, and a Rate on the County for the Sums laid out; if there is Occasion for sudden Repairs, not more than 30 *l.* two Justices may do it on View.]

[By *stat. 15 G. 3. c. 1.* They may administer Oaths when any Penalty is to be levied or Distress made.]

[By *St. 18 G. 3. c. 19.* Justices may award Costs on Complaint determined by him: to be levied by Distress; for want of it Commitment from one Month to ten Days or till Money and Expence of Commitment paid: Where Penalty amounts to 5 *l.* Costs not exceeding one Fifth to be deducted thereout.]

(B. 2.) In High Treason, Misprision, &c.

Vide Justices,
(K. 1, &c. —
L. 1, &c. —
N. 1.)—*Præ-*
munire.

In Cases of Treason, Misprision, and *Præmunire*, the Justices of Peace ought to apprehend the Offenders.

And shall take their Examination, *H. P. C. 168.*

And the Information upon Oath of others, who know any thing material, in Writing signed by them.

And commit the Offenders. *H. P. C. 168.*

And take Recognizances of the Informers to give Evidence before the Council, or elsewhere when necessary. *H. P. C. 168.*

And shall make a Certificate of their Proceeding to some of the Privy Counsel. *Dalt. 212.* (Edit. of 1727. 460.) or to B. R. or the Gaol-Delivery. *H. P. C. 168.*

And

And by the *St. 5 El. 1.* Justices of Peace at the Quarter Sessions, may inquire of *Præmunire* against such as by Writing, Teaching, or Act, maintain the Authority of the Bishop of Rome heretofore claimed in this Realm; but in forty Days or the first Day of the Term must certify it into *B. R.* on Pain of 100 *l.* to every Justice of Peace present at such Presentment.

And by the *St. 23 El. 1.* Justices of Peace may inquire of Treason against those, who contrary to the *St. 13 El. 2.* use, publish, or put in Ure any Bull, &c. from Rome, or absolve or be absolved by Colour of it; or contrary to *23 El. 1.* withdraw any in the Realm from their Obedience, or for that Intent to the Romish Religion, or move to be reconciled to, or shall be reconciled to the See of Rome.

And of Misprision of Treason against those, who contrary to *13 El. 2.* conceal any Bull, &c.

And of *Præmunire* against those, who contrary to *13 El. 2.* abet the Users, Publishers, or Receivers of such Bulls: Or bring into the Realm, offer, or receive to use any *Agnus Die*, &c.

And after such Inquiry, the Justices of Peace ought to certify their Presentments into *B. R.* without other Precept. *H. P. C. 168.*

Justices of Peace have no Authority to hear and determine High Treason, or Misprision of Treason. *H. P. C. 168.*

Nor Petit Treason. *Semb Comb. 405.*

Nor Offences in Cases of *Præmunire*. *H. P. C. 168.*

Vide Post. (P. 3.)

(B. 3) In Felony:

Justices of Peace have Authority to inquire of all Felonies.

Though it be Murder. *Dy. 69. a.* notwithstanding that by the *St. 6 Ed. 1.* 9. An Homicide shall be imprisoned till the Coming of the Justices in Eyre, or Gaol-Delivery; and by the *St. 4 Ed. 3. 2.* Keepers of the Peace shall send their Indictments before the Justices of Gaol-Delivery; for their Authority has been since enlarged by the *St. 18 Ed. 3. 2.* and *34 Ed. 3. 1.* *H. P. C. 165, 166.*

Or Petit Treason, as of a Felony. *Co. L. 391. a.*

By the *St. 18 Ed. 3. c. 2.* Justices of Peace with other learned Men, when need is, shall be assigned to hear and determine and punish Felonies and Trespasses in the same County.

And by the *St. 34 Ed. 3. 1.* They may hear and determine, at the King's Suit, all Manner of Felonies and Trespasses in the same County; and Writs of *Oyer* and *Terminer* shall be granted, &c.

And by the *St. 17 R. 2. 10.* In every Commission of the Peace two Men of Law shall be assigned, to make Deliverance of Thieves, and Felons.

But by the *St. 1 & 2 Pb. & M. 13.* Justices of Peace are directed to certify the Examinations of Prisoners for Manslaughter or Felony, and the Bailment of them, to the next Gaol-Delivery.

Justices of Peace may hear and determine all Felonies by Statutes, which specially give Authority thereof to Justices of Peace. *H. P. C. 167.*

And all Felonies made by Statutes, in which no Jurisdiction is given to any Justice, or Court in particular, nor any special Manner of Trial prescribed.

But they cannot hear Felonies, unless there be a Clause in the Commission. *ad audiendum & terminandum. H. P. C. 165.*

Yet by Force of that Clause, they cannot hear Felonies limited by Statute, to Justices of *Oyer* and *Terminer*; as, Forgery by the *St. 5 El. 14, &c. H. P. C. 165. R. 2 Rol. 96. l. 25.*

And in Regard of the Direction above, by the *St. 1 & 2 Pb. & M. 13.* of sending the Examination of Felons to the next Gaol-Delivery, they will not in Discretion determine great Felonies. *H. P. C. 166.*

They cannot proceed upon an Indictment taken before the Coroner. *H. P. C. 166, 168.*

Or, before Justices of *Oyer* and *Terminer*, or Gaol-Delivery. *H. P. C. 166, 168.*

Vide Justices,
(M. 1, &c.—
O. 1, &c.—
P. 1, &c.—
S. 1, &c.)

But only upon an Indictment before themselves or their Predecessors. *H. P. C.* 166.

Or transmitted to them from the Sheriff's Turn; by the *St. 1 Ed. 4. 2.* *H. P. C.* 168.

Justices of Peace have no Authority to hear and determine Felony against the *St. 3 H. 7. 18.* whereby the Steward, Treasurer, and Comptroller of the King's Household, or one of them, may inquire by twelve of the Check-Roll, if a sworn Servant admitted into the Check-Roll of the Household, have conspired the Death of the King, or a Lord of the Realm, or the King's Counsel, the Steward, Treasurer, or Comptroller of the Household: And on such Inquisition the Offender shall be put to answer before the said Steward, Treasurer and Comptroller, or two of them, who may hear and try the Offender, not being a Peer, by other twelve of the Household, and if convicted, by Confession or otherwise, he shall suffer as a Felon. *H. P. C.* 167.

Nor Felony against the *St. 8 H. 6. 12.* which gives Justices of the one Bench or the other, Jurisdiction of such Felons, who steal or withdraw any Record out of the *Chancery, Exchequer,* the one Bench or the other, or Treasury, whereby any Judgment is reversed, their Procurers and Abettors.

And this Statute extends to those who raise a Record. *H. P. C.* 167.

And by the same Statute it shall be tried by a Jury, half of the Men of any of the same Courts, and half of other. *Vide Dalt.* 108.

Nor Felony against the *St. 33 H. 6. 1.* which enacts, that if a Servant who embezils his Master's Goods after his Death, appear not in *B. R.* upon Proclamation to be made by the Sheriff two Market Days, upon a Writ to him directed at the Suit of the Executor, it is Felony: for *B. R.* must best know the Default of Appearance, which is to be in that Court. *H. P. C.* 167.

Nor Murder, Homicide, &c. committed within the King's House, which by the *St. 33 H. 8. 12.* shall be tried before the Lord Steward, and in his Absence, before the Treasurer, and Comptroller, and Steward of the Marshalsea, or two of them,

Nor Felony against *5 El. 14.* for forging, after a Conviction for the first Offence, any Deed, Writing sealed, Court Roll, Will, of Intent that the Estates, of Freehold or Inheritance or Interest of any Person in any Lands, Freehold or Copyhold, may be molested or charged, or that any Person may claim any Estate or Interest for Years in Lands, not Copyhold, or any Annuity in Fee-simple, Fee-tail, for Life, or Years or any Obligation, Bill obligatory, or Acquittance; or for consenting to such Forgery; or using such Deed, or Writing, knowing it to be forged: For the Determination of such Felony is given to Justices of Oyer and Terminer and Gaol-Delivery. *H. P. C.* 167.

Nor Felony, where the Stroke is in one County and the Death in another, or, Accessory in one County to a Felony in another; for by the *St. 2 & 3 Ed. 6. 24.* the Trial of it is given to Justices of Gaol-Delivery, and Oyer and Terminer. *H. P. C.* 167.

Nor Felony against the *St. 27 El. 2.* if any receive, relieve, aid, &c. any Jesuit, &c. knowingly.

Every Justice of Peace by virtue of his Commission, may direct Hue and Cry to be made upon a Felony committed. *Vide Dalt.* 105, 169.

May apprehend the Felon.

Or make a Precept to the Sheriff, Bailiff, Constable, &c. to make Search for the Offender, upon a Felony committed.

Or, to arrest and imprison a Person suspected to be a Felon. *Dalt.* 105.

By the *St. 2 & 3 Pb. & M. 10.* A Justice of Peace, before whom any shall be brought for Felony or Suspicion of it, shall take the Examination of the Prisoner, and Information of such as bring him, of the Fact and Circumstances, and as much as is material shall put in Writing within two Days after.

And by the *St. 1 & 2 Pb. & M. 13.* So shall he do before Bailment, if the Felon be bailable.

When bailable, and how he shall be bailed, *Vide in Bail, (F. 1, &c.—G. 1.—K. 1.)*

The Examination of the Prisoner shall be without Oath: Of the Witnesses, upon Oath. *Per Ord. Kek. 2. H. P. C. 262.*

And the Son, or Daughter may be examined against their Mother. *Dalt. 541.*
But not a Wife against her Husband. *H. P. C. 263. Vide Dalt. 540.*

The Justice shall take the Information of the whole Truth, tho' it tends to the Acquittal of the Felon.

By the *St. 1 & 2 Pb. & M. 13.* and *2 & 3 Pb. & M. 10.* The Justice of Peace is fineable, if he certify not such Examination, and Information, and Bail by him taken, to the next Gaol-Delivery.

Or, if it be Petit Larceny, it may be certified to the Quarter Sessions.

And all Recognizances and Bailments taken by a Justice of Peace must be certified the first Day of the next Sessions *ante Meridiem. Per Ord. Kek. 1.*

By the *St. 2 & 3 Pb. & M. 10.* The Justices of Peace may bind by Recognizance such as prove any thing material, to appear at the next Gaol-Delivery for the County, or Corporation; and shall there certify such Recognizance, on Pain of being fined.

If any refuse to give Evidence, the Justice may commit him. *Vide Dalt. 111.*

If the Offender, being upon Bail, do not appear at the next Sessions the first Day, or if the Prosecutor do not appear at the *Old Bailey* the first Day of the Sessions, their Default shall be recorded, and Process go thereupon. *Kek. 2.*

If the Offence be not bailable, the Prisoner by *Mittimus* shall be awarded to Gaol.

By the *St. 4 Ed. 3. 2.* Justices of Peace shall send Indictments (not determined before themselves) to the Justices of Gaol-Delivery.

But if the Party indicted does not appear before the Justices of Gaol-Delivery, the Justices of Peace cannot proceed afterwards: For the Indictment is not before them; and the Justices of Gaol-Delivery cannot make Process returnable before the Justice of Peace. *R. 2 Rol. 96. l. 50.*

[By the *St. 15 G. 2. c. 27.* Persons not giving an Account how they came by Woollen Cloth Goods, Yarn or Wool, (on Information that some has been stolen) may by one Justice be convicted of Stealing, and pay treble Value, or be distrained, or committed to the common Gaol for three Months.]

[For the second Offence, forfeit treble Value, and be committed for six Months.]
[For the third, be committed till Sessions, and there tried, and adjudged guilty of Felony, and transported for seven Years.]

[By *St. 17 G. 2. c. 40. ff. 10.* Quarter Sessions (and also Judge and Judges of Assize) may try Persons for embezzling Stores of War, and inflict Fine of 200 *l.* and imprison.]

(B. 4.) For Preservation of the Peace.

By Restraint of those who break it

By the *St. W. 1. 3 Ed. 1. 1. Le Roy voit, Que la Peace de saint Esglise, & de la Terre, soit bien gard & mainteign' en tous points, & que common Droiture soit fait a tous auxibien as povers, come as riches, sans regard de nulluy.*

And by the *St. 1 Ed. 3. 16.* (which first ordained Justices of Peace) Authority was only given to them to keep the Peace.

And therefore, every Justice by himself may, for the Preservation of the Peace, do all that a private Man or Constable may do.

May part, and restrain the Assailants.

(B. 5.) By Surety of the Peace, and Good Behaviour.

So Justices of Peace by their Commission have Authority to require *conjunctim* *Vide Forceable Entry, D. 18, &c.*
aut divisim Surety of the Peace and Good Behaviour.

And the Justice may demand such Surety by *Parol*, if the Party be present. *Vide Forceable Entry, (D. 18.) Vide Dalt. 379, 387.*

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Or

Or may by *Parol* command an Officer, or his Servant, to arrest him being present to find Surety. *Dalt.* 387.

Or may make a Precept in Writing under Seal, to bring any before a Justice to find Surety. *Dalt.* 387.

And such Precept may be directed to an Officer, or other indifferent Person. *Lamb.* 1. 2. c. 2. *Dalt.* 387.

It must contain the Cause; *Lamb.* 1. 2. c. 2. *Dalt.* 387.

For the Form, *To answer such Things as shall be objected*, is new and bad. *Lamb.* 1. 2. c. 2. But a Warrant was made in this Form *per Popb.* 3 *Jac.* and *per Edlesmere* *Ld. Chanc.* 4 *Jac.* *Dalt.* 301. (Edit. of 1727, 574.) Yet said to be bad. *2 Inst.* 591.

It may warn the Party himself before the Justice, who granted it. *Per Wray* 5 *Co.* 59.

(B. 6)
Recogniz-
ance for the
Peace; How
discharged.
By Release.

If a Recognizance for the Peace be taken by a Justice, upon his Discretion without Complaint, the Justice alone may release it.

If taken upon Complaint of another, he may release it, if the Release be certified to the next Sessions, and recorded there.

Tho' it be to keep the Peace against him and all People. *Cont.* 21 *Ed.* 4. 40. b.

And such Release may be before the Justice, who takes the Recognizance, or another Justice.

And shall be sent with the Recognizance to the Sessions; for the Recognizance may be forfeited before the Release, and therefore shall not be cancelled.

But the King cannot release or discharge a Recognizance, before it be forfeited. *D.* 21 *Ed.* 4. 40. b. *2 Vent.* 131.

Nor the Party, after the Forfeiture. *21 Ed.* 4. 40. b.

But the King after Forfeiture, may release. *2 Vent.* 131.
Vide Post, (B. 8.)

(B. 7.)
By Death.

A Recognizance of the Peace will be discharged by the Death or Demise of the King; for it was to keep the Peace of the present King. *1 H.* 7. 2. *Dalt.* 398.

Or, by the Death of him that required it. *Dalt.* 398.

Or, by the Death of the Cognisor. *Dalt.* 398.

But if it was forfeited before, it is not discharged: And therefore, it is safe for the Justice to lend it to the next Sessions. *Dalt.* 398.

It is not discharged by the Death of the Sureties; for the Executors are bound. *Dalt.* 398.

If after the Death of the Cognisor, his Recognizance be estreated in the Exchequer, it shall be discharged upon Plea. *R. Sav.* 53.

So upon Motion.

How a Recognizance for the Peace may be forfeited, or superseded, *Vide Forceable Entry*, (D. 26, 28.)

(B. 8.)
Recogniz-
ance for
Good Be-
haviour; how
forfeited, &c.
*Vide Force-
able Entry*,
(D. 27.)

A Recognizance for Good Behaviour will be forfeited by any Act, which is a Forfeiture of a Recognizance for the Peace. *Vide Forceable Entry*, (D. 27.)

Or by an Act, which is a Reason for requiring Surety for the Good Behaviour.

As, for being drunk. *Dalt.* 415.

So for an Escape from a Constable after an Arrest upon Suspicion of a Crime. *R.* 2 *Leo.* 166.

If he go in Company with riotous Malefactors. *Cro. El.* 86.

Or go with Weapons in an hostile Manner. *Cro. El.* 86.

If he threaten another to beat him, or fight with him. *Cro. El.* 86. *4 Inst.* 181.

If he take the Goods of another tho' it be not with Violence. *Per Wray*, *Cro. El.* 86.

But it is not forfeited, if the Party says to one, not an Officer, or not in the Execution of his Office, *You are a quarrelsome Fellow*, or *a scurvy Knave*. (*Vide 2 Rol.* 228.) *Dalt.* 415.

Or, to a Merchant, *You are a Bankrupt*. *Dalt.* 415.

Or,

Or, to a Man, You are a Liar, Drunkard, &c. R. 4 Inst. 181. for tho' they are Provocations, they do not end immediately to the Breach of the Peace. R. ibidem. Dub. Cro. El. 86. Per 3 J. Mod. 249.

Or, if the Party commit a Trespass *Quare clausum fregit*, tho' it be intended *vi & armis & contra pacem*, where it is only in Reputation of Law. R. 4 Inst. 181. Cro. El. 86.

Or Trespass to the Goods and Chattles, and not to the Person of a Man. 4 Inst. 181.

A Recognizance for Good Behaviour, as well as for the Peace, may be released. Vide Dalt. 415.

Or superseded, or removed by *Certiorari*. Dalt. 415.

If the Party refuse Surety he shall be committed.

But if the Party committed bring an *Habeas Corpus*, the Return must shew for what Cause the Sureties were required, and in what Sum, and all in certain. R. 2 Vent. 23.

[Estreats ought not to be made on Proof by Witnesses of Misbehaviour out of Court; but for Non-appearance they ought, for the Breach appears by Act of Court. R. v. Coffins, P. 18 G. 2. Parker 54.]

If a Recognizance for the Peace, or Good Behaviour be broken, there shall be a *Scire Facias* upon it. 4 Inst. 181.

And the Party cannot be indicted for a Breach before a *Scire facias*. R. 1 Rol. 900. l. 10. R. Ray. 196.

Vide *Forcible Entry*, (D. 16, &c.)

(B. 9.) By Suppression of Riots, &c.

So, by the St. 34 Ed. 3. 1. Justices of Peace shall have Power to restrain all evil Doers, Rioters, and other Barreters, and to arrest, pursue, and punish them according to Law. Vide *Forcible Entry*, (D. 8, &c.)

By the St. 13 H. 4. 7. If any Riot be made, the Justices or two of them, with the Sheriff, or Under-sheriff, and *Posse Comitatus*, if need be, shall arrest them, and record what they find done in their Presence, by which Record the Offenders shall be convicted as in *Forcible Entry*: But if the Offenders be departed before the Justices come, they shall inquire of such Riot within a Month, and hear and determine it. And if the Truth cannot be so found, they shall certify the King and Council in a Month, on which Certificate, being of the Force of a Presentment, the Offenders shall be put to answer; and if they traverse it, it shall be sent into B. R. and if convicted they shall be punished at the Discretion of the King and Council. If they refuse to appear at the first Precept, then shall go a *Capias*, then a Proclamation in the County to appear in three Weeks, and on Default, at the Return of the Proclamation they shall be convicted. And the next Justice of Peace, or Sheriff, or Judge of Assize, not doing Execution of this Statute in Case of a Riot, &c. in their Presence, shall as oft forfeit 100 l.—Confirmed by the St. 19 H. 7. 13.

By the St. 2 H. 5. 8. A Writ shall go to the Justices, to put the former Statute in Execution; but if they neglect it, a Commission shall go to inquire of such Riots, and of the Default of the Justices, and that, tho' no Writ came to them. But they shall execute it at the King's Charge to be allowed by the Sheriff. And these Statutes shall hold Place in Cities, and Boroughs, which have Justices of Peace.

By the St. 2 H. 5. 9. (Confirmed * by the St. 8 H. 6. 14.) On Complaint that Felons or Ripters are fled, witnessed under the Seal of two Justices of Peace, and the Sheriff, that the Common Fame runs of such Riots, the Chancellor shall send out a *Capias*, and a Writ of Proclamation, and if not then taken, they shall be attaint.

By the St. 19 H. 7. 13. On Inquiry of Riots, the Sheriff shall return twenty-four Jurors of 20s. Freehold, or 26s. 8d. Copyhold, or both, and 20s. Issue the first Day, 40s. the second Day, on Pain of 20 l. and if the Riot be not found by

* [And made perpetual.]

by reason of Maintenance or Embracery, the Justices shall certify such Maintainers or Embracers, together with the Riot, on Pain of 20 l. and they shall forfeit 20 l.

What is a Riot, &c. and how suppressed upon View, *Vide in Forcible Entry*, (D. 8, &c. 14.)

(B. 10.)
Upon Inquisition.

If the Rioters are departed, an Inquisition may be made within a Month, *Dalt.* 299.

If other Justices take the Inquisition, it is sufficient. *Dalt.* 299.

And, if it be within a Calendar Month. 1 *Sid.* 186.

Or, if it be after the Month it is good, but the Justices are fineable; for the Justices by their Commission may inquire. *Qu. Vide Dalt.* 299.

Or if the Jury be charged within a Month, tho' they make their Presentment afterwards. *Dalt.* 299.

Justices of Peace may inquire, tho' none of them be of the *Quorum*. *R.* 2 *Leo.* 184. *Dalt.* 299.

After Inquisition taken, the Justices may issue Process for the Party. *Dalt.* 300.

They may hear and determine, and thereupon fine and imprison. *Dalt.* 300.

And, upon Payment or Surety for it, may deliver. *Dalt.* 300.

But such Inquisition is traversable. *Dalt.* 300.

And if it be traversed, it shall be sent to B. R. or the Quarter-Sessions. *Dalt.* 300.

Whether it may be taken, except at the Quarter Sessions, *Dub.* 1 *Sid.* 186.

The Sheriff need not join in taking the Inquisition. *Dalt.* 300.

A Certificate to the Council or B. R. ought to be made, if upon the Inquisition, the Riot, by Maintenance of Embracery, be concealed. *Dalt.* 301.

If the Jury find ten guilty, the Justices may certify twenty to be Rioters. *Dalt.* 302.

And the Certificate may supply any thing material omitted in the Inquisition. *Dalt.* 302.

But if any Justice dies within a Month after Inquiry, the Certificate cannot be made. *Vide Dalt.* 302.

By the *St.* 5 *R.* 2. 7. 15 *R.* 2. 2. and 8 *H.* 6. 9. Justices of Peace may give Redress upon a Forcible Entry or Detainer. *Vide Forceable Entry*, (A. 1. &c.—B. 1, 2.—D. 1, &c.)

(B. 11.) By Punishment of Trespasses.

By the *St.* 18 *Ed.* 3. 2. and 34 *Ed.* 3. 1. Justices of Peace may hear and determine at the King's Suit all Manner of Trespasses in the same County.

[By *St.* 15 *G.* 2. c. 33. §. 6. Any Person taking the Rush or Shrub called Starr or Bent, on the North-West Coast of England, convicted before one Justice, forfeits 20s. and for the second Offence to suffer a Year's Imprisonment, whipping and hard Labour.]

[§. 7. Any Person having it, within five Miles of such Places, shall be deemed the Puller of it, and forfeit 20 s.]

(B. 12.) By Seizure of Arms, &c.

The Statutes which concern Arms are *pro bono Pacis*.

By the *St.* North. 2 *Ed.* 3. 3. None, except the King's Servants in his Presence his Ministers in executing Office, or their Assistants, or on Hue and Cry, shall come before the King's Justices or Ministers during their Office with Force, nor bring Force in an Affray of the Peace, nor go or ride armed, &c, on Pain to forfeit their Armour and their Bodies to Prison at the King's Pleasure. *Conf.* by the *St.* 7 *R.* 2. 13. and 20 *R.* 2. 1.

The Justice may command the Offenders upon View, or Complaint, to find Surety for the Peace.

Or shall go to the Place where the Force is, and make a Record of it, and afterwards may commit the Offenders, and seize and appraise the Arms found with them, and the Record shall be estreated in the *Exchequer*, that the King be answered for the Arms, or the Value. *Dalt.* 130.

If the Force be in a House, he may enter and search there. *Dalt.* 130.

The Justice may fine the Offenders committed, and the Record of it shall be certified to the next general Sessions, as in Forcible Entry. *Dalt.* 130.

Or, in *B. R.* or the Justices of Gaol-Delivery. *Dalt.* 130.

Or, upon Payment of the Fine or Surety for it, the Justice may deliver them. *Dalt.* 130.

So there may be an Information, against any one for going or riding in Arms to the Terror of People. *3 Mod.* 117.

Upon such Force there may be a Writ upon the *St. North.* directed to the Sheriff or the Justice, commanding him, that he make Proclamation *ne quis armatus contra pacem & statutum accedat, &c.* And all Offenders after Proclamation commit to Prison, and cause their Arms to be seized and appraised. *F. N. B.* 249. *F.*

After Proclamation the Justice may enter himself, or by Inquisition, make search for Arms. *Dalt.* 129.

But if the Offenders upon Proclamation depart, he cannot commit them, or seize their Arms. *Dalt.* 129.

The Justice must pursue the Writ and make Return of it. *Vide Dalt.* 129.

(B. 13.) For Restraint of Offences against Religion.

Witchcraft.

Justices of Peace have Conusance of several Offences against Religion, to the *Vide Justices*, common Annoyance of the Country, to the Prejudice of Trade, or Deceit of the *(S. 13.)* People.

By their Commission Justices of Peace may inquire *de veneficiis, incantationibus, sortilegiis, arte magica.*

By the *St. 1 Jac.* 12. * If any shall take upon him by Witchcraft, Inchant- * [Repealed
ment, Charm, or Sorcery, to tell where Treasure may be found in the Earth, by the *St.*
or lost Goods found; or to the Intent to provoke to unlawful Love, or where- 9 *Geo.* 2, 5.]
by Cattle or Goods shall be destroyed or impaired, or to hurt any Person in his
Body, though the same be not effected, he shall for the first Offence be im-
prisoned for a Year, without Bail, and once a Quarter stand six Hours in the Pil-
lory in a Market Town on a Market or Fair Day, and there openly confess his
Offence.—And the second Offence is Felony. *Vide Justices*, *(S. 13.)*

(B. 14.) Popery.

So Justices of Peace have Jurisdiction by the *St. 23 El.* 1. to inquire (within a *(B. 14.)*
Year and a Day after committing) of any Offence against 1 *El.* 1. 5 *El.* 1. 13 *El.* *Mafs.*
2. and 23 *El.* 1. touching her Majesty's Government in Causes Ecclesiastical, or
other Matters touching the Service of God, coming to Church, or Establishment of
true Religion.

By the *St. 1 El.* 2. All Ministers shall use the Book of Common Prayer; and
if any Manner of Parson, Vicar, or other whatsoever Minister refuse so to do,
or use any other Right, Ceremony, &c. he shall forfeit one Year's Profit of his
Spiritual Benefices, and be imprisoned for six Months; and if any Person speak
in Derogation of the Book of Common Prayer, or procure any Parson, Vicar, or
other Minister to sing or say any common or open Prayer, or to administer
the Sacrament, otherwise than as in the Book of Common Prayer, he shall forfeit
one hundred Marks, which if he do not pay within six Weeks after Conviction, he
shall instead of the said Sum suffer Imprisonment for six Months.

By the *St. 23 El.* 1. He who says *Mafs* forfeits two hundred Marks and a Year's
Imprisonment; he who hears it one hundred Marks and like Imprisonment. But
by the *St. 29 Ed.* 6. The Conviction shall be in *B. R.* or the Assises, and not
elsewhere.

By the *St. 11 & 12 W. 3. 4.* If Popish Bishop, Priest, &c. say Mass, or exercise any Part of his Function, or any Papist teach School, educate or board Youth, he shall suffer perpetual Imprisonment. Repealed by *St. 18 G. 3. c. 60. v. B. 18.*

Every one who chants Mass, tho' not a Parson, will be within the *St. 1 El. 2. R. Dy. 203.*

If upon the *St. 1 El. 2.* There be Judgment, that he forfeit 100 Marks, and if he does not pay it within six Weeks *quod imprisonetur*, and the Fine is estreated, and he afterwards dies within the six Weeks, the Fine shall be levied against the Executor. *Dub. Dy. 203. 231. b. But Dy. 231. b. in Marg. Semb. acc.*

As to Contempt of the Sacrament, Common Prayer, or any religious Service, *Vide Sacraments, (E.—F.)—Temps, (B. 3.)*

(B. 15.)
Other Super-
stition.

By the *St. 3 & 4 Ed. 6. 10.* Any, having Missals, &c. or Books or Images, &c. heretofore used in Churches, shall deface, or deliver them to the Mayor, &c. or Churchwarden, to be in three Months delivered to the Ordinary to be destroyed, on Pain of 10*s.* for every Book, for the first Offence, 4*l.* for the 2d, Imprisonment at the King's Will for the 3d. And the Mayor, &c. not delivering, &c. forfeits 40*l.* and the Bishop not destroying, 40*l.* which Offences Justices of Peace may determine.

By the *St. 3 Jac. 5.* None shall import, print, sell, or buy any Popish Books on Pain of 40*s.* per Book, a third Part to the King, a third to the Poor, and a 3d to the Informer; and two Justices of the Peace, or the Mayor, &c. where the Liberty is, may search Houses or Lodgings of a Popish Recusant Convict, or whose Wife is such, for Popish Books and Relicks, and may deface or burn them; but if valuable, they shall be defaced at the Quarter Sessions, and returned to the Owner.

(B. 16.) Conventicle.

By the *St. 35 El. 1.* (declared to be in Force by the *St. 16 Car. 2. 4.*) If a Subject, above sixteen, who hath without Cause absented a Month from Divine Service, persuade any to be present at a Conventicle, &c. or be present, &c. he shall be imprisoned without Bail, till he conform and make Submission pursuant to that Act; and if he conform not in three Months, on the Request of a Justice of Peace, &c. shall at the Assises or Quarter Sessions abjure, which Abjuration the Justice of Peace shall record, and certify to the Assises.

By the *St. 22 Car. 2. 1.* If a Subject, of the Age of Sixteen, or upwards, be present at a Conventicle, &c. where five or more besides the Household are assembled, any Justice of Peace or Chief Magistrate of a Corporation on Confession, Oath of two Witnesses, or Notoriety of the Fact, may record the Offence and impose 5*s.* on every Offender, and certify the Record, which is a full Conviction, to the Quarter Sessions, and may set 10*s.* for the 2d Offence to be levied by Distress and Sale, &c. And if a *Feme Covert*, on the Goods of her Husband; if poor, on the Goods of any present, so that no one pay above 10*l.* one 3d to the King, which shall be delivered by the Justice of Peace into the Quarter Sessions, and there to the Sheriff, and a Memorial of Payment recorded, and certified into the *Exchequer*; a 3d to the Poor; and a 3d to the Informer and to such as the Justice thinks active in the Discovery.

Provided any charged above 10*s.* may appeal in Writing to the Quarter Sessions, and give a Recognizance to prosecute with Effect, where the Justice shall certify such Conviction, and the Evidence on which it pass, and the Recognizance, and the Appellant, if determined against him, shall pay treble Costs.

He who preaches in a Conventicle, &c. or suffers it in his House, forfeits 20*l.* to be levied by Distress and Sale, &c. or if unknown, fled, or insolvent, on the Goods of any present, so that none pay above 10*l.* And the Justice of Peace, &c. on Denial of Entry, may break the House, &c. Provided every Offence be prosecuted within three Months.

But by the *St. 1 W. & M. 18.* The *St. 35 El.* or *22 Car. 2.* shall not extend to any present at, or Preacher in any Congregation, &c. with Doors open, certified

to the Bishop of the Diocese, Archdeacon, or Quarter Sessions, and registered in their Courts, who shall take the Oaths of Allegiance, and Supremacy, or Declaration of Fidelity, and subscribe the Declaration in the *St. 30 Car. 2.* And if the Preacher approve and subscribe the Thirty-nine Articles, except 34th, 35th, 36th, and Part of the 20th and 27th, at the Quarter Sessions.

Yet he will be liable to the former Statutes, unless he be qualified as the Statute requires. *R. Sal. 572.*

And a Licence in one County, does not give a Liberty in another. *Sal. 572. Mod. Ca. 228.* But this is altered by the *St. 10 Ann. Sal. 572.*

An Action *Qui tam, &c.* lies against a Justice of Peace, if he refuse to examine upon Complaint; tho' he is not bound to convict. *Skin. 60.*

(B. 17.) Recusant Convict.

By the *St. 35 El. 2.* and *3 Jac. 5.* A Popish Recusant Convict for not repairing to Church, shall in forty Days repair to the Dwelling of himself, or Parents, or Birth, (unless stayed by Order of the King or six of the Privy Council, Sickness, or Imprisonment, or be out of the Realm, and then in twenty Days after the Impediment removed,) and not remove above five Miles thence, without Licence in Writing from the King, three of the Privy Council, or four Justices of the Peace with Assent of the Bishop, Lieutenant, or Deputy Lieutenant, or obliged by Process, &c. on Pain of losing all his Goods, and Freehold Lands to the King, and Copyhold to the Lord of the Manor, unless recusant, and then to the King, during Life, but shall certify his Name to the Minister or Constable, and he to the Quarter Sessions.

By the *St. 3 Jac. 5.* If any Popish Recusant Convict come into Court where the King or his Heir apparent is, he forfeits 100 *l.* a Moiety to the King, a Moiety to the Prosecutor.

He shall in ten days after Conviction depart from *London* and ten Miles Distance, unless he be a Tradesman, or have a constant Dwelling there, on like Pain of 100 *l.* Moiety, &c.

He shall not practice Common or Civil Law, as a Counsellor, Attorney, Solicitor, Advocate, Proctor; nor Physick; or be an Apothecary, Judge, Steward, Register, Town-Clerk, or Officer of any Court; or be Officer in any Troop, Ship, or Fort, on like Pain of 100 *l.*

A Popish Recusant Convict, or if his Wife be convict, unless he, his Children and Servants hear Divine Service, and being of meet Age receive the Sacrament, &c. shall be disabled to exercise any Office or Charge in the Commonwealth by himself, or Deputy.

A Popish Recusant Convict shall not be Executor, Administrator, or Guardian in Chivalry, Socage, or Nurture: Nor, by the *St. 12 Car. 2. 24.* Guardian by Devise.

He shall be as excommunicate and disabled to sue any Action, but for Lands not seised for Recusancy.

If married otherwise than according to the Law of the Realm, the Man shall be disabled from being Tenant by the Curtesy, or if his Wife have no Estate of which he can be so, shall forfeit 100 *l.* the Woman shall lose her Dower, Jointure, Frankpledge, and Customary Share of her Husband's Goods: If he cause his Child to be baptized otherwise, he forfeits 100 *l.* one 3d to the King, a 3d to the Poor, a 3d to the Informer: If buried otherwise, his Executor or Administrator forfeits 20 *l.* to the King, Poor, and Informer.

By the *St. 23 El. 1. 29 El. 6.* and *3 Jac. 4.* A Popish Recusant Convict forfeits 20 *l.* per Month, or two Parts of his Lands and Tenements whereof he is seised, or settled to his Use or in Trust for him, or wherewith he or his Family is relieved, at the Election of the King.

By the *St. 3 Jac. 5.* A Feme Covert being a Popish Recusant Convict, if her Husband be not, shall forfeit two Parts of her Jointure, and Dower, and cannot be Executrix or Administratrix to her Husband, or demand any Portion of his Goods.

&c.

By the *St. 1 Jac. 4.* and *3 Jac. 5.* A Person who sends any Child to a Seminary &c. or to have his Education beyond Sea, without Licence from the King or Six Privy Council (not being a Merchant, Factor, &c.) forfeits 100 *l.* (And by the *St. 3 Car. 2.* If he send a Child, &c. or Relief to such Child, or Benevolence, &c. to any Religious House, he shall be disabled to sue or be Committee of a Ward, Executor, or Administrator, or to take a Legacy, or Gift, or bear any Office, and shall lose all his Goods, and all his Lands, Annuities, &c. during Life.

And the Person sent shall be disabled to enjoy or take by Descent, Devise, &c. any Lands, Goods, &c. or be Executor, &c. unless he take the Oaths and receive the Sacrament, &c. but they shall go to the next Heir, not Recusant, 'till Conformity, who shall then account for the Profits, &c.

By the *St. 3 Jac. 5.* and *1 W. & M. 26.* A Popish Recusant Convict, and he refusing to repeat and subscribe the Declaration in the *St. 30 Car. 2.* when tendred by two Justices of Peace, or to appear on Notice by Warrant under the Hands and Seals of two Justices left at his Abode, whereupon his Name shall be certified and recorded at the Quarter Sessions, shall be disabled to present to any Benefice, Free-School, Hospital, &c. or any in Trust for him, or to grant the next Avoidance, until at Quarter Sessions he subscribe the Declaration and take the Oaths, &c. but such Presentation, &c. shall be given to the two Universities of *Oxford* and *Cambridge* respectively.

But if the Conviction be pardoned, he shall be restored to his Ability. *R. per 3 J. 3 Lev. 333.*

If after Conviction the King takes the Advowson as Part of his two Parts, he shall present, not the University. *Per 3 J. Jon. 27.*

By the *St. 11 & 12 W. 3. 4.* Any educated in Popery, who after eighteen Years of Age doth not in six Months take the Oaths, &c. and subscribe the Declaration *30 Car. 2.* shall be disabled to take by Descent, Devise, or Limitation, any Lands, &c. for himself only, but his next of Kin, being Protestant, shall take the Profits during his Life, or till he take the Oaths and subscribe the Declaration, &c. without Account. And no Papist shall be able to purchase in his own, or any other's Name. Repealed by *St. 18 G. 3. c. 60. v. B. 18.*

By the *St. 3 Jac. 5.* The Armour, &c. of a Popish Recusant Convict shall be seised by Warrant of four Justices of Peace at the Quarter Sessions, (except such as the Justices think necessary for Security of his House or Person,) and kept at his Costs where the Justices think fit: And if any refuse to shew his Armour, &c. or disturb the Delivery, he shall forfeit the Armour, &c. and suffer three Months Imprisonment, without Bail.

And by the *St. 1 W. & M. 15.* A Papist refusing the Oaths and Declaration, *30 Car. 2.* or to appear on Notice left at his Abode by Warrant from two Justices of Peace, if he keep any Arms, &c. more than allowed by Order of Quarter Sessions for Defence, two Justices may authorize any in the Day time with a Constable to search for and seise them, and deliver them at the Quarter Sessions; and may commit for three Months without Bail a Papist not discovering Arms, or hindering the Search or Seisure. who shall forfeit the Arms, &c. and treble Value as appraised at Quarter Sessions.

And a Concealer of Arms shall be committed three Months without Bail, and forfeit treble Value; and a Discoverer of the Concealment shall have the Value of the Arms, &c. to be assessed by the Justices at Sessions, and levied by Distress and Sale, &c.

And no Papist so refusing, &c. shall keep an Horse above the Value of 5 *l.* which two Justices of Peace by Warrant, &c. may seise, and commit the Concealer for three Months without Bail, who forfeits treble Value.

By the *St. 1 W. & M. 8.* If a Person on the 2d Refusal of Oaths be bound over to the Assises and there refuse them, and likewise refuse to make and subscribe the Declaration *30 Car. 2.* he shall be taken as a Popish Recusant Convict.

By the *St. 1 W. & M. 9.* Any Justice of Peace shall cause a reputed Papist, not being a Foreigner, in *London* or ten Miles Compass, to be brought before him and tender the Declaration *30 Car. 2.* who refusing and yet continuing in *London* or *Westminster*, or ten Miles Distance, unless a Tradesman, or hath constant Dwelling there, and certifies his Name at the Sessions, shall forfeit as a Popish Recusant Convict:

viſt: So ſhall Refuſers, whoſe Names the Juſtices ſhall certify into B. R. or the next Quarter Sessions, if they do not take and ſubſcribe the Declaration next Term or Quarter Sessions.

By the *St. 27 El. 2.* If any Perſon, knowing a Jeſuit, &c. in *England*, diſcover it not in twelve Days to a Juſtice of Peace, &c. he ſhall be fined and impriſoned at the King's Pleaſure: And the Juſtice of Peace, not diſcovering it in twenty-eight Days, to ſome of the Privy Council, forfeits 200 Marks. (B. 18.) Proſecution for Recuſancy.

By the *St. 35 El. 2.* A Jeſuit, &c. examined and reſuſing to answer, whether he be ſo or not, ſhall be committed 'till he directly answer.

By the *St. 3 Jac. 4.* Churchwardens and Conſtables, once a Year ſhall preſent the monthly Abſence of a Popiſh Recuſant, and the Names of Children nine Years old, and Servants, at Quarter Sessions, on Pain of 20 s. and for every Conviction on ſuch Preſentment ſhall have 40 s.

If preſented, and on Proclamation he renders not himſelf to the Sheriff before next Quarter Sessions, he ſhall be convicted, &c.

But a Preſentment for Abſence the firſt M. and ſo for Six Months, where there are only ten Days after 1^{ſt} M. before the Sessions, is bad, *R. Ray.* 434.

By the *St. 11 & 12 W. 3. 4.* Any apprehending a Jeſuit, &c. ſo that he be convicted of exerciſing his Function, ſhall have 100 l. from the Sheriff, who ſhall pay it in four Months on Certificate, and on Pain of 200 l.

By the *St. 3 Jac. 5.* Any diſcovering a Recuſant, or a Retainer of a Jeſuit, &c. to a Juſtice of Peace in three Days after the Offence ſhall be pardoned himſelf, and have a 3^d Part of the Forfeiture, if it exceed not 150 l. and then 50 l. provided he be taken, and convicted.

By the *St. 29 El. 6.* Indictment of a Recuſant ſhall be good, tho' the Party is not ſaid to be within the Realm.

By the *St. 3 Jac. 4.* It ſhall not be reverſed for Defect or Want of Form, unleſs the Party conform. *Ray.* 434.

So, by the *St. 22 Car. 21.* Indictment for being or preaching at a Conventicle, &c. or any Proceeding on that Act, ſhall not be impeached for Default of Form.

And if he conform, the Conviction upon the *St. 3 Jac. 4.* ſhall not be reverſed by Writ of Error, but ſhall be quaſhed in the *Exchequer.* *Ray.* 434.

[By *ſtat. 18 G. 3. c. 60.* the *ſtat. 11 & 12 W. 3. 4.* As far as it relates to apprehending, taking, or proſecuting Popiſh Biſhops, Priests, or Jeſuits, or ſubjects them, or Papiſts, educating Youth, to perpetual Impriſonment; or diſables Papiſts to inherit, &c. and gives to the next of Kin; or diſables them to purchaſe Manors, Lands, &c. or makes void all Profits, &c. out of Lands for their Behoof, is repealed, as to all who ſhall take the Oath there preſcribed of Allegiance to King George, abjuring the Pretender, rejecting the Poſitions that Hereticks may be murdered, or that no Faith is to be kept with them, that Princes excommunicated, &c. may be depoſed or murdered by any Perſon, and declaring that the Pope, &c. have no Temporal or Civil Jurisdiction in this Realm.]

(B. 19.) Recuſant conforming.

Upon Conformity, the Recuſant ſhall make the Submiſſion preſcribed by the *St. 35 El. 2.*

By the *St. 3 Jac. 4.* A Popiſh Recuſant conforming, ſhall in a Year after receive the Sacrament, &c. on Pain of 20 l. and ſo once every Year on Pain of 40 l. for the 2^d Year, and 60 l. every ſubſequent Year, a Moiety to the King, a Moiety to the Informer, to be recovered at *Westminster*, Affiſes, or Quarter Sessions.

And an Information upon this Statute is ſufficient, tho' the Time, or Court, where the Conviction was had, does not appear, if there be no Demurrer to it. *R. after Verdict, 2 Cro. 365.*

Or, when, and before whom he conformed. *R. 2 Cro. 366.*

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But

But by a Conformity declared in Court before the Trial, the Action of Debt commenced shall be discharged; for the Prosecutor fees subject to that Hazard. *R. Raym.* 465.

(B. 20.) Non-Conformist.

By the *St.* 13 & 14 *Car.* 2. 4. and 15 *Car.* 2. 6. On Certificate from the Bishop, that any Person disabled or prohibited to preach, &c. (by reason of Non-Conformity) hath preached any Sermon, &c. two Justices of Peace or Mayor, &c. may commit, &c. for three Months without Bail.

By the *St.* 17 *Car.* 2. 2. Persons not declaring Assent to the Common Prayer, &c. shall not come within five Miles of a Corporation, &c. nor teach School, &c. on Pain of 40 *l.* one third Part to the King, a third to the Poor, and a third to the Prosecutor at *Westminster*, Assises, or Quarter Sessions.

But by the *St.* 1 *W. & M.* 18. A Person, qualified by that Act to preach, shall not be subject to the Penalties of the said Statutes.

(B. 21.) Quaker.

By the *St.* 13 & 14 *Car.* 2. 1. A Quaker refusing the Oath, when duly tendered, or maintaining all Oaths unlawful, or assembling for Religion, &c. forfeits not exceeding 5 *l.* to be levied by Distress and Sale, &c. and for want of Distress and Non-payment in a Week, to be committed to Gaol or House of Correction; for the second Offence not exceeding 10 *l.* to the Use of the House of Correction, to be levied, &c. on Conviction by Verdict, Confession, or Notoriety of the Fact at the Quarter Sessions, &c. for the third Offence shall abjure, or be transported.

But by the *St.* 1 *W. & M.* 18. A Person subscribing the Declaration 30 *Car.* 2. and taking the Declaration of Fidelity, and Profession of the Christian Belief there prescribed, is exempted from the Penalty of the said Statute *supra*. Provided he produce two Witnesses to swear they believe him a Protestant Dissenter, or a Certificate under the Hands of four Conformists and six of his Congregation, owning him, &c. and the Justice of Peace shall require a Recognizance with two Sureties of 50 *l.* and for Failure commit him till produced.

[By *Stat.* 22 *G.* 2. c. 30. The Liberty of Affirming instead of Swearing is granted to the *Moravian* Brethren, and they are exempted from bearing Arms in *America*. They are also authorized to have Bishops in *America*: for the Certificate of one of their Bishops, or of a Pastor authorized by him, is to be Evidence; and Lists of their Bishops are to be transmitted to the Plantation-Office.]

(B. 22.) Profanation.

As to Penalties and Offences in the Neglect, or Profanation of the Sacraments, or Divine Service. *Vide Sacraments*, (E.—F.)

As to Offences by Profanation of the Sabbath, *Vide Temps*, (B. 3.)

(B. 23.)
Cursing and
swearing.

By the *St.* 21 *Jac.* 20. (continued by the *St.* 3 *Car.* 4. and 16 *Car.* 4.) and by the *St.* 6 & 7 *W.* 3. 11. If any be convict of prophane cursing or swearing, by Confession, Oath of one Witness, or Hearing of Justice of Peace, before any Justice of the County or Corporation, he shall forfeit, if a Servant Day-Labourer, Common Soldier, or Seaman 1 *s.* other Person 2 *s.* to the Use of the Poor where the Offence was, for the 1st Offence; double for the second Offence; and treble for the third Offence; on Neglect of Payment to be levied by Warrant from a Justice of Peace to a Constable, &c. by Distress and Sale, &c. and in Default of Distress, the Person, if above sixteen, to be on Warrant, &c. set in the Stocks an Hour for a single Offence, and for more, two Hours; if under sixteen and he pay not, to be whipt by the Constable or Parent &c. in Presence of the Constable. But the Offence shall be prosecuted within ten Days, and the Justices of Peace shall certify the Conviction to the next Quarter Sessions.

By the *St. 6 & 7 W. 3. 11.* A Justice of Peace, &c. omitting his Duty forfeits 5*l.* a Moiety to the Informer.

If the Party is charged by the Information to be a Gentleman and above sixteen Years of Age, it is not necessary, that it appear by the Adjudication, or the Oath upon which the Conviction is, that he was so, and not a Labourer, Soldier, or Sailor. *R. 2 Mod. Ca. 366.*

[If the Information sets forth that the Defendant is a Gentleman, &c. and the Oath is, that the *aforesaid Defendant* did swear, it is good, tho' the Oath is not that he is a Gentleman, &c. *Rex v. Tucke, P. 11 G. 2 Ld. Raym. 1386.*]

[If the Penalty is laid at 2*s.* it must appear that the Offender is not a Servant.]

But the Conviction ought to shew the Oath, for which he was convicted. 2 *Mod. Ca. 367. 58. 9.* *

* [By the *St. 19 G. 2. 21.* The Penalty is for a Day-
a Gentleman

Labourer, &c. 1*s.* For every other Person under a Gentleman 2*s.* For Every Person of, or above the Degree of a Gentleman 2*s.* *Vide the St.*

[The Oaths and Curses must be set forth. *Rex v. Sparling, H. 8 G. Str. 497.* *Rex v. Chaveney M. 11 G. 2 Ld. Raym. 1360.* *Rex v. Popplewell, H. 12 G. Str. 686.*]

[The Conviction must be in *Latin* (*i. e.* before the *stat. 19 G. 2. c. 21.* *Ibid.*)]

[Conviction for Swearing one Hundred Oaths, *viz.* by G—d, and a Hundred Curses, *viz.* G—d d—mn you, is good, without repeating them a Hundred Times. *Rex v. Roberts, M. 11 G. 2 Ld. Raym. 1376. Str. 608.*]

24.) For Restraint of Offences to the Common Annoyance, &c.

Refusal of Oaths.

By the *St. 3 Jac. 4. 7 Jac. 6. 1 W. & M. 8. and 7 & 8 W. 3. 27.* Justices of Peace have Authority to make a Tender of the Oaths of Allegiance and Supremacy, and to make Convictions against those who refuse. *Vide Allegiance, (B. 2. &c.)* *Vide Ante, (B. 17.)*

Two Justices of Peace may issue a Warrant upon the *St. 7 Jac. 6.* to bring the Person suspected before them, to take the Oath; for when a Statute enables them to tender an Oath, it gives a Power also for warning the Party before them. *R. 12 Co. 130.*

But a Constable cannot break an House to take such a Person. *R. 12 Co. 131.*

And the Nobility may be committed for Refusal of the Oath; for the Words extend to all before, among whom are the Nobility. *Dist. 12 Co. 131.*

(B. 25.) Inns, and Ale-houses.

Every one may erect a Common Inn, if it be not *ad Nocumentum.* *H. P. C. 146. Hut. 92. 2 Rol 84. l. 25.*

So by the Common Law, Keeping an Ale-house without a Licence was no Offence. *Per Cur' 1 Sand. 249, Sho. 398. 2, Hut. 99. D. 1 Sal. 45.*

Nor selling Wine without a Licence. *Per Cur'. 1 Sid. 6.*

So a Man who has an ancient Inn may enlarge the Rooms or build new Edifices within the Circuit of the Inn, and they shall have the same Privileges with the first Edifice. *R. 2 Rol. 84 l. 55.*

But erecting a Common Inn, where there were ancient Inns enough before, is a Nuisance. *H. P. C. 146. 2 Rol. 345.*

Or, when situated in an inconvenient Place. *H. P. C. 146. R. Hut. 100. Rol. 345.*

Or, when Disorders are suffered there. *H. P. C. 146. 2 Rol. 345. Salk. 45.*

Or, if a Common Innholder refuse to entertain Guests, he may be indicted and fined. *H. P. C. 146.*

So, if a Common Innholder be convicted upon an Indictment for bad Behaviour, he may be suppressed. *R. Hut. 100.*

By

(B. 26.)
Ought to
have Licen-
ces.

By the *St. 5 & 6 Ed. 6. 25* None shall keep an Ale-house, unless allowed in open Sessions or by two Justices of the Peace, (1 *Qu.*) who shall take a Recognizance, against unlawful Games and for good Rule, and on Pain of 3 *l.* 6 *s.* 8 *d.* certify it to the next Quarter Sessions, the Breaches whereof the Quarter Sessions, may inquire of, &c. And if any sell Ale, &c. without a Licence, &c. unless in the Time of a Fair, for every Offence two Justices (*Qu. 1.*) shall commit him to Gaol without Bail for three Days; and before his Deliverance shall take a Recognizance with two Sureties not to use Selling of Ale, as the Justices see convenient; which Recognizance and Offence the Justices of Peace shall certify to the next Quarter Sessions, where in open Sessions he shall be fined 20 *s.* for every Offence.

By the *St. 3 Car. 3.* If any use the common Selling of Cyder, Ale, &c. without a Licence, on Conviction by View, Confession, or two Witnesses, he shall forfeit for the 1st Offence 20 *s.* to be levied by Distress, on a Warrant of one Justice of Peace to the Constable or Churchwarden, for the Use of the Poor; and for Non-payment in three Days by Sale, &c. or if no Distress and no Payment be in six Days, shall be committed to the Constable, &c. to be openly whipped, as the Justice shall appoint: For the second Offence shall be committed, to the House of Correction for a Month, to be dealt with as an idle Person: For the third Offence shall be committed, till delivered by the Justice at the General Sessions. And such Justice may commit a Constable, &c. refusing or neglecting to execute the Warrant, &c. till he cause it to be executed, or pay 40 *s.* to the Use of the Poor.

Any one convicted by two Justices, according to the *St. 5 & 6 Ed. 6. 25.* for selling Ale without Licence, cannot be afterwards allowed, but in open Sessions. *H. P. C. 147. Per Warb. A. 1613. Dalt. 26, 27. (Edit. 1727, 31.)*

By the *St. 5 & 6 Ed. 6. 25.* Justices of Peace, or two of them (1 *Qu.*) may put away common Alehouses, where they think meet.

But this Clause seems to be intended of Ale-houses *in Esse* at the Time of the Statute; but others extend it to Ale-houses afterwards; and for these they take the Words of *Warb. and Hale, supra*, that if they are suppressed by two Justices they cannot be allowed afterwards, but in Sessions.

Inns erected, since the *St. 5 & 6 Ed. 6. 25.* must have Licences, &c. as Ale-houses. *R. Cont. Hut. 100. Cont. except where it degenerates to an Ale-house. Sal. 45.*

By the *St. 4 Jac. 4.* None shall directly or indirectly sell any Beer or Ale to a common Ale-house-keeper, not then licensed, &c. other than for the Expence of his Household only on Pain of 6 *s.* 8 *d.* *per* Barrel, whereof the Sessions or Court of Record of a Corporation, &c. may inquire, &c. by Action, Indictment, &c. a Moiety to the Prosecutor, a Moiety to the Poor, which the Officers levying, &c. shall deliver to the Churchwardens, and they to the Poor, on Pain of forfeiting double, to be levied and employed as aforesaid.

By the *St. 2 G. 2. 28.* A Licence, not at a General Meeting, shall be void.

If a Recognizance given by an Ale-house-keeper be broke, it may be proceeded upon. *Sal. 45.*

If an Ale-house be kept without Licence, it may be suppressed. *Sal. 45.*

Or, if they commit Disorders, which amount to a Nuisance; it may be indicted. *Salk. 45.*

Or, suppressed. *Semb. Sal. 471.*

The Order for Suppression need not shew, that it was a common Ale-house, or that the Party was summoned. *2 Mod. Ca. 309, 377. Rex v. Venables, T. 11 G. Fort. 325. Stra. 630. 2 Ld. Raym. 1405.*

[But if it afterwards appear by Affidavit, that the Justices committed the Offender without summoning him, they will grant an Information against them. *Ibid. Rex v. Allington, H. 12 G. Str. 678.*]

[But if the Offender appears, and is present at the Conviction without offering at a Defence, it is sufficient. *Rex v. Atbay, M. 32 G. 2. 2 B. M. 653.*]

[In Conviction on *3 Car. c. 3.* it is not necessary to say that he had not been punished by *5 & 6 Ed. 6. c. 25.* *Rex v. Ford, T. 9 G. Str. 555.*]

But

But a Man cannot be indicted, merely for keeping an Ale-house without Licence; for the Statute has prescribed another Manner of Restraint. *Sal. 45.*

So the Sessions cannot suppress an Ale-house, which has a Licence by two Justices, except for Disorder. *R. Sal. 47.*

[So the Order must shew in what County the Alehouse was; for the County in the Margin relates to the Place of making the Order. *R. 2 Mod. Ca. 310. Rex v. Austin, M. 11 G. A. For. 325.*]

[B. R. has no Power to review the Reasons on which Justices form their Judgment in granting Licences, by way of Appeal from their Judgments, or over-ruling that Discretion intrusted to them. *Rex v. Young, P. 31 G. 2. B. M. 556. Rex v. Williams, Rex v. Davis, Rex v. Baylis, P. 2 G. 3. 3 B. M. 1317.*]

[But if it clearly appears that they have been partially, or maliciously, or corruptly influenced in the Exercise of this Discretion, they are liable to Indictment or Information; or possibly to Action, for gross and injurious Malice. *Ibid.*]

[The only Method of bringing this before the Court is on the Footing of Criminality; inasmuch that when a Rule to shew Cause why an Information, &c. had been moved for, and the Court out of Tenderness to the Justice had made it, to shew Cause why they had not granted the Licence, they were obliged to alter it again before it could come on to be argued regularly. *Ibid.*]

[The Rule is invariable, that the Court will not interpose to punish a Justice for a meer Error in Judgment. *Ibid.*]

[Having kept a Publick-house without Licence; having been convicted of selling Spirits without Licence; suffering a Labourer to drink a whole Day in Harvest, and vindicating it; being charged with a Fraud on Oath; Highwaymen using his House as a Publick-house; that there are Publick-houses sufficient; are good Reasons to refuse a Licence. *Ibid.*]

[On a groundless Application for an Information, the Court will discharge the Rule to shew Cause, with Costs. *Ibid.*]

[Action lies not against Justices for refusing a Licence. *Basset v. Godschall, T. 10 G. 3. 3 Wils. 121.*]

[In order to obtain Information, the Party applying must alledge he is not guilty of the Offence. *Rex v. Athay, M. 32 G. 2. 2 B. M. 653.*]

Justices have no Authority to annex Conditions to the Grant of Licences. *Ibid.*

[If Justices refuse Licence for having voted, or acted, contrary to their Recommendation for Members of Parliament, B. R. will grant Information. *Rex v. Williams, Rex v. Davis, P. 2 G. 3. 3 B. M. 1317. Rex v. Hann, T. 5 G. 3. 3 B. M. 1716.*]

[Justices found guilty, or confessing Information for refusing Licence, on bad Motives (as for differing from them in Election Matters,) shall appear in Person to receive Judgment. Judgment in this Case was a Month's Imprisonment, and 50 l. Fine a-piece. *Rex v. Hann, M. 6 G. 3. 3 B. M. 1786.*]

[For spirituous Licences, and Penalties of selling without, *vide stat, 23 G. 2. c. 40.*]

[By that *St. and St. 26 G. 2. c. 13.* No Brewer, Distiller, Maltster, Inn-keeper, can grant Ale-licence, nor act as a Justice relating to Distillery.]

[The Penalties cannot be reduced under 5 l.]

[Head Office of Excise may grant Licences within their Limits, to Persons renting Houses of 12 l. *per Annum*, tho' not rated.]

[By *St. 26 G. 2. c. 31.* Justices licensing Ale-houses shall take Recognizance for good Order, and send them to Clerk of the Peace, on Pain of 3 l. 6 s. 8 d. on Justice signing Licence and not sending Recognizance.]

[Licence shall not be granted to Person not licensed the Year preceding, without a Certificate from Parson, Vicar, or Curate, and Majority of Churchwardens and Overseers, or else of three reputable and substantial Housekeepers in the Parish.]

[Licensed Person dying, another with Certificate, signed by a Justice in thirty Days, may keep it open.]

[Licence does not intitle any Person to keep Alehouse in any other Place than that in which it was first kept by virtue of it.]

[Licence to be granted at a general Meeting of the Justices acting in that Division,

on 1st September, or within twenty Days after, for one year only, to commence on 29th.]

[One Justice, if on Complaint he thinks Recognizance forfeited, may summon Offender to appear at Quarter-Sessions, and bind any Person to appear and give Evidence; Sessions may order Jury to inquire, and if they find Condition broken by Act specified in Complaint, Sessions shall adjudge him guilty of Breach, and the Recognizance shall be estreated, and the Party disabled to sell Ale, &c. for three Years, and all Licences to him void.]

[If a Justice suspects a Person sells Ale, &c. without Licence, he may summon him and Exciseman to produce Books; and if it appears by his Books or Oath, that he is charged as a Victualler, and is not intitled to the Allowance of common Brewer, he shall be deemed an Alehouse-keeper.]

[Justice may summon Party and Evidence, and if they do not appear, or refuse to be examined, forfeit 10 l.]

[Person disabled from selling Ale, is disabled from selling Spirits.]

[Persons selling Ale without Licence, forfeits for first Offence 40 s. second 4 l. third 6 l. for want of Distress to be committed one Month for first, two Months for second, and till discharged by Quarter-Sessions, for third Offence.]

[And by *stat. 5 G. 3. c. 46.* Costs and Expences. One Justice may determine in a summary Way, and on Non-Payment commit for one, two and three Months, for first, second and third Offences, and all subsequent.]

[Convictions to be returned to next Quarter Sessions, and filed.]

[By *stat. 29 G. 2. c. 12.* Ale-licences to be on 20 s. Stamp.]

[Person dying or removing, his Representatives may sell without Certificate from Justice.]

[Alehouse becoming empty after licensing Day, two Justices may grant Licence till next licensing Day.]

[Persons selling Ale in a Prison, House of Correction, or Workhouse, shall take out Licence.]

[By *stat. 13 G. 3. c. 56.* Person retailing Spirits without Licence forfeits 50 l. to be recovered in *Westminster-Hall*, or by the Excise-Laws. Excise or Justice must not mitigate to less than 5 l.]

(B. 27.)
Ought not to
permit Tip-
pling.

By the *St. 1 Jac. 9.* (made perpetual by the *St. 21 Jac. 7.*) If any Inn-keeper, Victualler, Ale-house-keeper, (and by the *St. 1 Car. 4.* any Taverner, keeping also an Inn, or Victual-House,) permit any Inhabitant, (or by the *St. 1 Car. 4.* any Foreigner,) not accompanying a Traveller during his needful Abode there, nor a Labourer or Handicraftsman in a Corporation or Market Town on a Work-Day for one Hour to take Diet, nor a Labourer or Workman for Work sojourning there, nor for urgent occasions, to continue tippling in such Inn, &c. shall forfeit 10 s. to the Poor on View of the Mayor, Justice of Peace, &c. or, by the *St. 21 Jac. 7.* on Confession, or one Witness, to be levied by the Constable or Churchwarden by Distress, and on Non-Payment in six Days by Sale, &c. and for Want of Distress the Offender to be committed till Payment. And a Constable or Churchwarden neglecting to levy, &c. or certify Want of Distress in twenty Days to the Mayor, Justice of Peace, &c. forfeits, 40 s. to the Poor, to be levied by Distress and on Non-payment in six Days, by Sale, and for Want of Distress shall be committed till Payment.

By the *St. 4 Jac. 5.* and *21 Jac. 7.* If an Inhabitant or Foreigner continue tippling, &c. unless for urgent Occasions to be allowed by two Justices of Peace, or the Causes expressed in the *St. 1 Jac. 9.* he shall forfeit 3 s. 4 d. for every Offence to the Poor, to be levied after View of the Mayor, Justice of Peace, or by the *St. 21 Jac. 7.* Confession or Proof of one Witness, at Assises, Sessions, or Lect, by Distress on Warrant from the Court, or Justice of Peace; and if the Person be unable, the Mayor, Justice of Peace, or Court may set him in the Stocks for four Hours. But the Offender must be convicted in six Months.

By the *St. 7 Jac. 10.* An Ale-house-keeper convicted for suffering Tippling contrary to the *St. 1 Jac. 9.* shall be disabled to keep an Ale-house for three Years.

By

By the *St. 21 Jac. 7.* The Oath of an Offender confessing, is sufficient Proof to convict any other Offender of an Offence against the *St. 1 Jac. 9.* and *4 Jac. 5.*

An Ale-house-keeper, convicted of Tippling in another Ale-house, shall be disabled for three Years; Upon Conference of the *St. 4 Jac. 5.* and *7 Jac. 10.* *Dalt. 28.* (Edit. 1727. 34. 35.)

Or, of any Offence against the *St. 1 Jac. 9.* *4 Jac. 5.* or *21 Jac. 7.* *H. P. C. 147.* *Vide Dalt. 35.*

[By *Stat. 30 G. 2. c. 24.* Keeper of Publick-house suffering Journeymen, Labourers, Servants or Apprentices, to game in his Premises, forfeits 40 s. for first Offence, and 10 l. for every other.]

By the *St. 4 Jac. 5.* and *21 Jac. 7.* Any convicted of Drunkenness by View of any Justice of Peace, Confession, or Oath of any Witness, tho' the Party confessing, at the Assises, Sessions, or Leet, or Presentment, &c. or before any Justice of Peace within six Months, forfeits for the first Offence 5 s. to the Poor to be levied on Warrant from the Court of Justice by Distress, and if unable to pay, shall be committed to the Stocks for six Hours: For the second Offence shall be bound with two Sureties in a Recognizance of 10 l. to be from thenceforth of good Behaviour. (B. 28.) Drunkenness.

By the *St. 7 Jac. 10.* and *21 Jac. 7.* An Ale-house-keeper convicted of Drunkenness shall be disabled to keep an Ale-house for three Years.

By the *St. 4 Jac. 5.* A Constable, &c. neglecting his Duty, forfeits 10 s. to the Poor, to be levied on Warrant from the Mayor, Justice of Peace, or Court where the Conviction is.

(B. 29.) Barretry.

So, by the *St. 34. Ed. 3. 1.* Justices of Peace shall have Power to restrain Rioters, and all other Barretors, and to take, pursue, arrest, and chastise them according to their Offence, and to cause them to be imprisoned and punished according to Law.

Vide Barretry, (C.)

Bastardy.

As, to Bastardy, *Vide Bastard, (G. 1, 2, 3.)*

Bridges.

As, to Bridges, *Vide Chimin, (B. 1, &c.)*

(B. 30.) Deceit.

By the *St. 21 Jac. 21.* (which repeals former Statutes for this Matter) If an Innholder make Horse Bread, a Baker being in the Town, or sell not the same, and his Oats, Provender, Hay, and Victuals both for Man and Beast at reasonable Prices, the Justices of Peace in a County, or Corporation, may hear and determine, &c. and for the first Offence, the Innholder shall be fined; for the second imprisoned for a Month without Bail; for the third be set in the Pillory; and for the fourth forejudged of keeping an Inn again. (B. 30.) In Innholders.

Vide Post, (B. 90, 91, 92, 93.)

Vid. Post, (B. 87, 88, 89.)

Justices of Peace may inquire of any Thing done to the Fraud or Deceit of another.

As, if a Man read a Writing to an illiterate Person, in other Words than it was wrote, by which means he seals it. *1 Sid. 312.*

If a Man play with false Dice. *R. 2 Rol. 107.*

(B. 31.)
In Weights
and Measures.

(B. 32.)
In Victual-
lers.

(B. 33.)
Other Fraud.

[By

[By Stat. 17 G. 2. c. 35. Three Justices may set the Retail Price of Coals; and if the Retailer refuses to sell at that Price, they may empower an Officer to force Entrance into any Place where such Coals are stored up, and to sell them at that Price.]

[By Stat. 31 G. 2. c. 24. One Justice may bind over a Person accused of obtaining Money by false Pretences.]

[Whoever pawns, exchanges, or disposes of Goods without Owner's Consent, forfeits 20 s. and on default may be committed to hard Labour for fourteen Days, if not sooner paid; if not paid three Days before Expiration, to be whipt.]

[Several Regulations for Pawnbrokers.]

(B. 34.) Tithes neglected.

Vide Difmes,
(M. 4.)

By the St. 27 H. 8. 20. On Request of the Spiritual Judge in a Suit of Tithes, two Justices of Peace (1 Qu.) may attach the Defendant and commit him without Bail, 'till he find Surety by Recognisance to obey the Proceedings, &c. of the Ecclesiastical Court.

So by the St. 32 H. 8. 7. Till he find Surety by Recognisance to obey the Sentence definitive, &c.

By the St. 7 & 8 W. 3. 6. (Continued by the St. 10 & 11 W. 3. 15. 'till 1705) If any substract small Tithes, &c. or Composition, not above the Value of 40 s. for twenty Days after Demand, unless in London, or Town where settled by Act of Parliament, on Complaint, within two Years, in Writing, to two Justices of Peace, neither interested in the Tithes, nor Patron, &c. they may summon in Writing the Party, and on Appearance or Default, the Summons being proved by Oath, may examine Evidences, and in Writing under Hand and Seal determine the Cause, and give Costs not above 10 s. And on Non-payment by ten Days after Notice may by Warrant to Constables, &c. distrain for the Money adjudged, and if not paid in three Days sell, &c. And if the Party remove into another County, &c. may certify the Judgment to the Justices of Peace there, who shall levy, &c. But the Party grieved may appeal to the Quarter Sessions, who shall finally determine, and if they affirm may give what Costs they think fit, to be levied by Distress and Sale, &c.

And no Writ, &c. shall remove or supersede, &c. unless the Title of the Tithes come in Question; but if the Party insists before the two Justices on a Prescription, *Modus*, &c. in Writing under his Hand, and gives Security to pay all Costs if the *Modus*, &c. be found against him, the Justices shall make no Judgment, or if a Suit hath been for the same Matter in the *Exchequer*, or Ecclesiastical Court. And the Party shall inroll the Judgment of the two Justices at the Quarter Sessions which shall be a Bar, &c. to another Suit: But if the Complaint be frivolous, the Justices may give Costs not above 10 s. against the Complainant.

By the St. 7 & 8 W. 3. 34. If a Quaker refuse great or small Tithes or Church Rates, the two next Justices of Peace may convene him, examine the Truth of the Complaint, state what is due not above 10 l. and by Order under Hand and Seal appoint Payment, and on Refusal, &c. levy by Warrant from any of the said Justices by Distress and Sale, &c. unless he appeal, as he may, to the next Quarter Sessions of the County or Corporation, who shall finally determine, and, if Judgment continued, give Costs against the Appellant, to be levied by Distress and Sale, &c. *

*Made perpetual, 1 G. 6.

[If the Order does not specify that the Complaint was in writing, it will be quashed. *Rex v. Furness*, H. 6 G. Str. 264.]

[It is not sufficient Ground to obtain a *Certiorari*, on an Order for Quakers Tithes, or Customary Payments, that they alledge that the Title is in Question, without shewing on what Footing it is controverted; especially if it appears, that their Lands always paid, and that they bought them subject to such Payment. *Rex v. Wakefield*, H. 31 G. 2. 1 B. M. 485.]

(B. 35.) Extortion.

So Justices of Peace have Authority by their Commission to inquire of Extortion.
Vide Extortion.

Vide Extortion, (D.)

Vide Extortion, (E.)

(B. 36)
What Fees
are allowed
(B. 37.)
What not

(B. 38.) Forestalling.

By the *St. 5 & 6 Ed. 6. 14.* Justices of Peace may inquire, &c. of Forestalling, Regrating, and Ingrossing against the Statute, at the Quarter Sessions, by Presentment, and Examination of two Witnesses, &c. and may award Process as on an Indictment, and estreat Fines, &c. and for the Moiety of the Informer award Execution by *Fieri facias*, or *Capias*.

By the *St. 31 Ed. 1. Rast.* A Forestaller is declared to be *Depressor Pauperum* and a public Enemy, who shall not be suffered in any Town, but for the first Offence shall be amerced and lose the Goods bought, for the 2d be set in the Pillory, for the 3d imprisoned and ransomed, for the 4th abjure the Realm. 3 *Inst. 196.*

By the *St. 25 Ed. 3. 3.* A Forestaller, of Victuals or Merchandize, coming by Land, or Water, shall forfeit the Goods or Value, and, if not responsible, suffer two Years Imprisonment; if convict at the Suit of the Party, a Moiety to the King, and a Moiety to the Party.

By the *St. 5 & 6 Ed. 6. 14.* He that buys Merchandize, Victuals, or other Thing, coming by Land or Water, to a Market, Fair, or Port to be sold, or makes a Bargain or Promise for any Thing so coming, or by Message or otherwise motions the enhancing the Price, or dissuades any coming from bringing such Things to Market, Fair, or Port, is a Forestaller: And being convict within two Years after, shall, for the 1st Offence suffer two Months Imprisonment without Bail, and forfeit the Value of the Goods; for the 2d Offence half a Year's Imprisonment, and double the Value of the Goods; for the 3d Offence be set in the Pillory, lose all his Goods, and be imprisoned during the King's Pleasure.

By the *St. 5 El. 5.* No Statute against Forestalling shall extend to buying so much unsalted Fish, or Mud-Fish, Wine, Oil, or Salt by way of Forestalling, as shall be brought in an *English* Vessel into some Port in this Realm.

Forestall is derived from *Fare, Via, and Stall, Impedimentum*: And, by the Common Law, Regrating and Ingrossing were comprehended withih Forestallment. 3 *Inst. 195.*

But it is no Forestallment, to buy at *Billingsgate*; for it is a Market. *R. Sbo. 292.*

[*Stat. 12 G. 3. c. 71.* repeals 3 & 4 *Ed. 6.* 5 & 6 *Ed. 6.* 3 *Pb. & M.* 5 *Eliz.* 15 *C. 2.* and Part of 5 *Ann.* and all Acts inforcing them.]

(B. 39.) Regrating.

By the *St. 5 & 6 Ed. 6. 14.* He that regrates, or gets into his Possession in any Fair or Market, any Corn, Wine, Fish, Butter, Cheese, Tallow, Candles, Sheep, Lambs, &c. or dead Victual brought there to be sold, and sell the same again in the same, or other Fair or Market within four Miles, is a Regrator, and being convict within two Years after shall suffer, &c. *ut Forestaller Ante*, (B. 38.)

Provided, a Subject dwelling within a Mile of the Main Sea, may buy fresh or salted Fish, and sell the same again at reasonable Prices.

And if any buy any Oxen, &c. Sheep, Lambs, Calves, or Goats living, and sell the same alive, without keeping them five Weeks on his own Grounds, he shall forfeit double the Value of the Cattle, a Moiety to the King, a Moiety to the Prosecutor, &c. unless a Drover, licensed by three Justices of Peace (1 *Qu.*) who may buy Cattle, and sell them again in Fairs or Markets, at forty Miles Distance.

By the *St. 5 El. 5.* The Statutes against Regrators shall not extend to buying out of any *English* Vessel so much unsalted or Mud-Fish, Wine, Oil, or Salt by way of Regrating, as shall be brought into Port in this Realm.

A Regrator *alias dicitur* a Chopper, or Jobber. 3 *Inst.* 195. *Marg.*

(B. 40.) Ingrossing.

(B. 40.)
What shall be.

By the *St. 5 & 6 Ed. 6. 14.* He that gets into his Hands by Buying or Contract, (and not as Tithes or Lessee,) any Corn, Butter, Cheese, Fish, or other dead Victual within the Realm, with Intent to sell again, is an Ingrosser.

Ingrossing was an Offence and indictable by the Common Law. 3 *Inst.* 195, 196.

As, if a Merchant Foreigner, or Subject, buy Victuals or Merchandize within the Realm in Gross, and sell them presently in the Gross. *R. by all the J.* 3 *Inst.* 196.

An Ingrosser by the Common Law was comprehended under the Word *Forstaller*. 3 *Inst.* 196.

And every Enhancement of Prices was an Offence; for it was *quasi* a Forstallment. 3 *Inst.* 195.

As, if a Man had sold Corn in Sheafs. 3 *Inst.* 197.

If by false Rumours he enhances the Prices. 3 *Inst.* 196.

So a Fishmonger, or any in Trade, may be indicted for ingrossing, if he buys going to Market, or by Retail, to enhance the Price. 1 *Roll.* 11.

Within the *St. 5 & 6 Ed. 6. 14.* Salt is a Victual, and the Ingrossing punishable. *R. 3 Inst.* 195. *Dub Cro. Car.* 231.

And every Thing for the necessary Use of Man, in Eating and Drinking. 3 *Inst.* 195.

An Indictment for buying, *ad intentione ad revendendum*, is sufficient, and after Verdict it shall not be intended of a Revendition by Retail. *R. Cro. Car.* 315. *Jon.* 320.

And it need not say, *that he had it not by Demise, &c.* for that shall be shewed on the other Side in Evidence. *R. Jon.* 157.

If the Informer prays the Forfeiture *ad valorem* of the Thing ingrossed, without saying the Sum it is sufficient. *R. Jon.* 157.

And it is sufficient, if he prays the Moiety for himself, and demands nothing for the King. *R. Jon.* 157.

(B. 41.)
What not.

But it will not be Ingrossing by the Common Law, if a Merchant buys out of the Realm, and imports and sells in the Gross. *R. 3 Inst.* 196.

So, by the *St. 13 El. 25.* He shall not be an Ingrosser, who buys Wine, Oil, Sugar, Currans, Spice, or other foreign Victuals.

So, by the *St. 5 & 6 Ed. 6. 14.* He shall not be an Ingrosser, if he buy Barley or Oats, and convert it into Malt or Oatmeal in his own House, and then sell it.

Though he buy foreign Oats. *R. Hard.* 231.

So, if he buy Corn, with Intent to convert it to Meal, and then sell it. *Per 2 J.* *Mo.* 595.

Or, to convert it to Starch. *R. Bridg.* 6.

So, by the same Statute of 5 & 6 *Ed. 6. 14.* If a Fishmonger, Butcher, Poulterer, Innholder, or Victualler, buy what belongs to their Trade or Employ, to sell by Retail.

Or if any buy salted or dried Fish, Herrings, or Sprats, and sell at reasonable Prices. *Vide 2 Bul.* 249.

So, by the same Statute. If any buy Corn to seed his Ground; but if he have of his own Corn sufficient to seed his Ground and find his House for a Year, and brings not to Market as much as he bought, he shall forfeit double the Value of what he bought.

Or, if a Badger, &c. allowed by three Justices, buy Corn, Butter, Cheese, or Fish to be sold within a Month in a Fair, or Market, or to any Person for Provision

tion of his House, or buying for the Provision of a Corporation, Ship, or Fort, &c. it is no Offence, without Forestalling.

And by the *St. 5 El. 12.* A Badger, Drover, &c. must be, or have been married, be an Householder, thirty Years old, and allowed in the Quarter Sessions.

By the *St. 15 Car. 2. 7.* Every Person may buy Corn in open Market to lay up and sell again at these Prices, viz. Wheat 48 s. Rye 32 s. Barley or Malt 28 s. Buck-Wheat 28 s. Oats 13 s. 4 d. Pease and Beans 32 s. per Quarter, (not fore-stalling, nor selling again in the same Market within three Months.)

So Apples, Plums, Cherries, or other Fruit are not Victual, being more for Pleasure than Necessity. *R. & Aff. in Error 3 Inst. 176. Cro. Car. 231. 2 Cro.*

214.

Nor Hops. *Cro. Car. 231.*

(B. 42.) Game.

By the Common Law, Recreations by Cards, Dice, &c. were not prohibited. *(B. 42.)*
11 *Co. 87. b.* Unlawful Sports.

And therefore the King cannot prohibit the making of Cards, Dice, &c. 11 *Co. 87. b.*

And such Recreations are not *Mala in se*, for the King may license them. 11 *Co. 87. b.*

But by the *St. 33 H. 8. 9.* None shall keep a common House, or Alley, for *Vide List,* Bowls, Coyts, Tennis, Dice, Cards, or other unlawful Game, without a Placard, (L. 14.) &c. on Pain of 40 s. for every Day. *Vide infra 2 & 3 Pb. & M. 9.*

And none shall haunt or play at such Houses or Games on Pain of 6 s. 8 d. for every Time.

No Artificer, Husbandman, Labourer, Apprentice, Journeyman, Mariner, Fisherman, or Servant, shall play at such Games, unless at *Christmas* in the Master's House, or in his Presence by his Licence, on Pain of 20 s. for every Time.

And Justices of Peace, Mayor, &c. shall search once a Month (if need be) on Pain of 40 s. after such Houses or Games, and shall imprison the Keepers or Haunters of them, till they find Surety by Recognizance not to do so. *

And by the *St. 2 & 3 Pb. & M. 9.* Every Placard, for keeping a Bowling Alley, Dicing House, or other unlawful Game, shall be void.

Playing at Nine Pins is an unlawful Game within this Statute. *Adm. 1 Sid.*

247. So, keeping a Cockpit.

So, by the *St. 10 & 11 W. 3. 17.* Lotteries are common Nufances, which none shall keep on 500 l. nor play at, on 20 l. Penalty.

By the *St. 16 Car. 2. 7.* If any win by Cosenage at Cards, Dice, Tables, Tennis, Bowls, Skittles, Shovelboard, Cock-fighting, Dog-match, Horse-race, Foot-race, or other Game or Pastime, he forfeits the treble Value, a Moiety to the King, a Moiety to the Loser, if he sue in six Months; otherwise to any who prosecutes in the Courts of *Westminster*, &c.

So, by the *St. 9 Ann. 14.* After 1 May 1711. If any lose at any Time or Sitting by Play or Betting to one or more Persons, in the whole, the Sum or Value of 10 l. and pay the same, he may in three Months next recover the Money from the Winner.

[If Defendant is convicted on 9 *Ann. c. 14.* which gives five-times the Value to a common Informer, the Judgment is only, *quod convictus est*, and an Action for the Forfeiture must be brought on the Judgment. *Rex v. Lookup, T. 9 G. 2. Str. 1048.*]

By the *St. 16 Car. 2. 7.* If any play at any of the said Games *supra*, or any other Game, (not for ready Money,) or bet on the Side of a Player, and lose above 100 l. on Tick at any one Time, &c. he shall not be bound to pay, but all Judgments, Bonds, &c. for the same shall be void: And the Winner shall forfeit treble the Value of what he wins above 100 l. a Moiety to the King, a Moiety to him who will sue by Debt, Information, &c. and treble Costs.

* [By the *St. 30 Geo. 2. 24. s. 14.* Persons keeping Public Houses, &c. suffering Gaming there by Journey-men, Labourers, Servants, or Apprentices, and convicted by Justices of Peace, shall forfeit 40 s. and for every Offence afterwards, 10 l.]

[Horse-

[Horse-racing is Gaming within *stat. 16 C. 2. c. 7.* and Money won as a Wager on it cannot be recovered. *Goodburn v. Marley, M. 15 G. 2. Str. 1159. Blaxton v. Pye, P. 6 G. 3. 2 Wils. 309.*]

If he lose at the same Meeting above 100*l.* to several Persons, it will be within the Statute. *R. 3 Keb. 671. R. Lut. 180. If Partners 1 Sal. 345. Vide infra.*

If he lose 80*l.* and then agrees to play another Time, when he loses 80*l.* more; it shall be said to be all lost at one Time and Meeting. *D. 5 Mod. 6. Dub. 2 Mod. 54.*

If there be an Agreement for four Heats at an Horse-race, and the Action is for two Heats, which was under 100*l.* *Per Holt, T. 8 W. 3. R. 1 Vent. 253. 2 Lev. 94. Skin 573.*

If a Bill be drawn for the Money upon B. who accepts it, yet it shall be void. *T. 8 W. 3. Jacob v. Hufsey B. R. 1 Salk. 344. 5 Mod. 175.*

By the *St. 9 Ann. 14.* All Notes, Bonds, Judgments, Mortgages, &c. where all or any Part of the Consideration was for Money won at Cards, Dice, Tables, Tennis, Bowls, or other Game, or by Betting, or lent to any when gaming or betting, shall be void.

And the Mortgage, &c. shall enure for the sole Benefit of him, who would be intitled to the Lands after the Death of the Mortgagor; and all Conveyances to prevent the same shall be fraudulent and void.

[Money lent at Play on a Man's bare Word may be recovered, for it is not within *stat. 9 Ann. c. 16.* which has not the Word *Contract.* *Barjeau v. Walmsley, H. 19 G. 2. Str. 1249.*

[Cricket is a Game within *9 Ann.* and a Bond given as a collateral Security for Money won at it, is void. *Jeffreys v. Walter, T. 21 & 22 G. 2. 1 Wils. 220.*]

[A Foot-race is within *stat. 9 Ann. c. 14.* but if A. lays a Wager with B. that C. cannot run on a certain Day four Miles in twenty-one Minutes and a half, and C. does run it, and the Money is paid to B. if it is not laid that C. was playing at a Game called a Foot-race, such Wager is not Betting within the Statute. *Lynall v. Longbotham, M. 30 G. 2. 2 Wils. 36.*]

But, if at Play, a Man makes a Wager above 100*l.* for a Thing which relates to the Play, it is not within the Statute; for it is a collateral Matter: As, a Wager, whether a Cast Touch at Backgammon ought to be removed. *R. 5 Mod. 6. 4 Mod. 409. 1 Sal. 344. Skin. 572.*

So, if a Bill be for Money at Play, to the Winner or Order, and that is assigned for a just Debt, and accepted in the Hand of the Assignee, it shall not be within the Statute, as to the Assignee. *Per Holt in B. R. T. 8. W. 3. Hufsey and Jacob. 1 Sal. 344. R. 2 Mod. 279.*

[If A. gives a Note to B. for Money by him knowingly advanced to A. to game with at Dice, and B. indorses it for a full Consideration to C. who is ignorant that any of the Money had been lent for Gaming, yet C. cannot maintain Action for it. And *Lee Ch. J.* said the *dictum* of *Holt C. J.* in *Hufsey v. Jacob*, was not the Point adjudged, and all the Bar wondered at it. *Bowyer v. Bampton, T. 14 G. 2. Strange 1155.*]

[A. gives a Bill of Exchange drawn by himself on himself, and accepted by himself, to B.; Part of the Consideration is Money lost at Play, the Rest Money lent at the Time and Place of Play; B. cannot recover any thing on the Bill of Exchange, but he can recover the Money lent on the Contract, and shall have Interest from the Time the Bill became payable to the Judgment. *Robinson v. Bland, M. 1 G. 3. 2 B. M. 1077.*]

So it is not within the Statute, if a Man lose 100*l.* to one, and afterwards 100*l.* to another; for it is a several Contract. *R. 1 Sal. 345. Vide supra.*

So, if he lose 2000*l.* in ready Money, and afterwards 100*l.* more upon Tick. *R. 1 Sal. 345. R. 1 Sid. 394.*

How the *St. 16 Car. 2.* shall be pleaded in Bar to a Debt, &c. (*Vide in Pleader, 2 G. 8.—2 W. 26.*)

[B. R. may give leave to Prosecutor to compound a Prosecution for Gaming. *Anon. P. 19 G. 2. 1 Wils. 130.*]

[By

[By 12 G. 2. c. 28. §. 1. Persons setting up, &c. a private Lottery, forfeit 200 l. one Third to the Informer, two Thirds to the Poor of the Parish, on Conviction, on the Oath of one Witness before one Justice.]

[By §. 2. The same for Ace of Hearts, Pharaoh, Basset and Hazard. And by 13 G. 2. c. 19. §. 9. To Passage, and all Games with Dice, except Backgammon, &c.]

[By §. 3. Adventurers at them forfeit 50 l.]

[§. 4. All Sales by such Devices void, and the Lands or Goods forfeited to whoever will sue.]

[By 13 G. 2. c. 19. §. 1. No Person shall start any Horse at a Horse-race, unless his own Property, on Pain of Forfeiture of such Horse; nor more than one, on Pain of forfeiting all but the first.]

[By §. 2. No Prize to be under 50 l. Value; if any Person starts for less, 200 l. Penalty; if any Person advertises a less Prize, 100 l. Penalty.]

[(By §. 3. Five Year olds were to carry ten Stone, six Year olds eleven Stone, and seven Year olds twelve Stone, on Pain of 200 l. But this is repealed 18 G. 2. c. 34. §. 1.) tho' it is the most material Clause for the Preservation of the Breed of Horses, and for the Prevention of gaming.)

[By §. 4. The Race must begin and end the same Day.]

[§. 5. No Match shall be for less than 50 l. unless run at *Newmarket*, or *Black-Hambleton*, on Pain of 200 l.]

[§. 6. Penalties to be recovered in *Westminster-Hall* or *Affizes*, half to the Informer, half to the Poor where the Offence committed; and in *Somersetshire* to *Bath Hospital*.]

[§. 7. Entrance-Money shall go to the second best Horse.]

[§. 8. This Act does not extend to any Prizes then issuing out of Lands or Money chargeable therewith.]

[A Horse-race for 25 l. a Side Play or Pay tho' one gives the other 5 l. to make the Match, is a Match for 50 l. *Bidmead v. Gale*, P. 9 G. 3. 4 B. M. 2432.]

[By *stat.* 18 G. 2. c. 34. the Penalties of *stat.* 12 G. 2. c. 28. are extended to the Game of *Roulet*, *alias* *Roly-poly*, and all prohibited Games with Cards or Dice.]

By §. 3. Courts of Equity are impowered to enforce their Decrees in Suits brought on *stat.* 9 Ann. c. 14. (for Discovery of Money lost at Play) in the same Manner as in other Suits.]

By §. 5. Justices, &c. may summon Witnesses, who not attending, or refusing to give Evidence, or giving false Evidence, forfeit 50 l. or suffer six Months Imprisonment.]

[By §. 7. Privilege of Parliament taken away in Prosecutions for keeping Gaming-House.]

[By §. 8 & 9. Persons winning or losing 10 l. at one Time, or 20 l. in twenty-four Hours, are indictable, and liable to a Fine of five-times the Value; but if they inform, and convict another, they are discharged.]

[By *stat.* 30 G. 2. c. 24. If Journeymen, Labourer, Servant or Apprentice games in an Alehouse, Master forfeits 40 s. for first Offence, and 10 l. for every other: and the Offender 20 s. to 5 s. or be committed to hard Labour for one Month.]

By the *St.* 33 H. 8. 6. None shall use or keep a Hand-Gun, not a Yard long in the Stock and Barrel, or Hagbut not three Quarters of a Yard long, on Pain of 10 l. (B. 43.) Shooting. Vide *Let.* (L. 14.)

None not having 100 l. *per Annum* in his own or his Wife's Right shall shoot in, keep, or carry charged any Cross-Bow, Hand-Gun, &c. unless to shoot at a Butt or Bank of Earth, in a Place convenient, on Pain of 10 l.

None shall shoot within a Quarter of a Mile of a City, Borough, or Market Town, on 10 l. unless at a Butt or Bank.

No Servant, by Command of his Master, shall shoot at a Deer or Fowl on Pain of 10 l. but may carry a Gun for his Master, or to be mended, if he have Licence in Writing so to do.

But none shall be punished till twenty Days past after Proclamation made of this Statute in that County; nor any Gunsmith, Maker or Seller of Guns, nor Inhabitants within five Miles of the Sea, twelve Miles of Scotland or in the Isles of Jersey, Guernsey, Anglesea, Wight, or Man, nor the Owner of a Ship for Trial or necessary Use of a Gun.

Any, who hath 100 *l. per Annum*, may take away the Cross-Bow from an Offender to his own Use, and a Gun under due Length, which he shall break, on Pain of 40 *s.* and keep to his own Use.

And every one may carry an Offender to a Justice of Peace, who may commit till Payment of the 10 *l.* a Moiety to the King, a Moiety to the 1st Bringer of the Offender to a Justice of Peace.

And the Sessions of Peace may hear and determine the Offence, and Fine not less than 10 *l.* on an Indictment or Information, at the Suit of the King within a Year, of the Party within Half a Year after the Offence; And if the Jury wilfully conceal, may summon another Jury to inquire of the Concealment, and if found fine the first Jurors 20 *s.* a-piece.

Pistols, Daggs, Stone-Bows, &c. are within the Prohibition of this Statute, *R. 5 Co. 71. b.*

The Conviction upon it, must be before the next Justice of Peace. *Semb. 1 Sand. 263.*

It must be alledged certainly, that he had not 100 *l. per Annum* at the Time of the Offence. *R. 3 Mod. 280.*

He must be carried directly before the next Justice. *4 Mod. 147.*

But carrying a Gun by a Sheriff or his Ministers, in the Execution of Justice, is not prohibited by the Statute. *R. 5 Co. 72. a.*

So having a Gun in the House without using it, is not within the Statute. *R. Sho. 48.*

By the *St. 1 Jac. 27.* Any convicted before two Justices, on Confession or by two Witnesses, for killing with a Gun, Cross-Bow, &c. or shooting at any Pheasant, Partridge, Pigeon, Hearn, Duck, Teal, Widgeon, Grouse, Heathcock, Moregame, or Hare, shall be committed (till he pay 20 *s.* to the Poor of the Parish for every Pheasant, &c.) for three Months without Bail, unless after one Month he give a Recognisance of 20 *l.* with Surety to two Justices to be returned to the Quarter Sessions, not to shoot at or kill, &c. at any Time after: And the Justices at Quarter Sessions may hear, &c.

Provided, a Person licensed at the Quarter Sessions may kill small Birds for Hawks Meat, so he give a Recognisance of 20 *l.* not to shoot at any Game prohibited by this Law, nor within 600 Paces of any Hearnery, nor 100 Paces of a Dovehouse, nor in a Park or Forest.

By the *St. 3 Jac. 13.* A Person not having 40 *l. per Annum* in Land, or 200 *l.* in Goods, or Ground for Deer or Conies of 40 *s. per Annum* using a Gun, Bow, &c. to kill Deer, &c. any having 100 *l. per Annum* in Land may take such Gun, &c. to his own Use.

By the *St. 22 & 23 Car. 2. 25.* Persons not having an Inheritance of their own, or their Wife's of 100 *l. per Annum*, or 150 *l. per Annum* in an Estate for Lives or Years, above 99, or Heir Apparent of an Esquire or higher Degree, or Owner, or Keeper of a Forest, Park, or Warren stocked with Deer or Conies for necessary Use, shall not keep or use any Gun, Bow, &c. And a Lord of a Manor, not under an Esquire, may under Hand and Seal license a Gamekeeper, who may within his Manor seize any Gun, Bow, &c. or with Warrant of a Justice of Peace, may in Day-time search and seize to the Use of the Lord any Gun, Bow, &c. found in the House of a Person not qualified. *Vide Post, (B. 46.)*

[Lord of a Manor may appoint a Gamekeeper with Power to kill Game, though he is neither a Person qualified, nor a menial Servant of the Lord; and such Gamekeeper has a Right to carry a Gun any where, though out of the Manor; and though he kills Game, or sports out of the Manor, his Gun cannot be taken from him; but if he kills Game out of the Manor, he is liable to the Penalty. *Rogers v. Carter, M. 9 G. 3. 2 Wils. 387.*]

By

By the *St. 4 & 5 W. & M. 23.* A Person not qualified, &c. convict before Justices of Peace on Search by Constable, &c. for keeping or using Bows, or other Instruments for Destruction of Fish, Fowl, or other Game, shall pay not less than 5 s. nor above 20 s. a Moiety to the Informer, a Moiety to the Poor, to be levied by Distress and Sale, &c. And for want of Distress, &c. shall be sent to the House of Correction, for no less than 10 Days nor above a Month.

By the *St. W. 1. 3 Ed. 1. 1.* None, without Licence, shall fish in another's Vivary, (a Place where Fish are kept, 2 *Inst.* 162.) on Pain of Imprisonment, Ransom, and double Damages to the Party if he will sue, if not, the King shall have the Suit as against the Peace: And Persons indicted shall be attached, and distrained to appear within a Month, then a second *Distingas* to appear in six Weeks, and on Default shall be convict and fined. (B. 41.) Fishing.

By the *St. W. 1. 20.* Misfeasors in Fish-Ponds shall make good Amends, &c. By these Statutes Fishing in any Fish-Ponds, tho' no Fish taken is punished. 2 *Inst.* 200

By the *St. W. 2. 13 Ed. 1. 47. and 13 R. 2. 19.* None shall take Salmon between 8 September and 11th November, nor young Salmon with Engines at Mill Pools between the Middle of April and 24th June, nor with Nets or Engines destroy the Fry of Fish, on Pain of having the Nets burn't for the first Offence, of Imprisonment for a Quarter of a Year for the 2d, and of a whole Year for the 3d Offence. 2 *Inst.* 478.

By the *St. 17 R. 2. 9.* Justices of Peace shall be Conservators of the *St. W. 2. 47. and 13 R. 2. 9.* and may appoint Under Conservators, and at Sessions inquire of Defaults, &c.

By the *St. 1 El. 17.* None shall take the young Fry or Spawn of Fish, nor kill Pike under ten, Salmon under sixteen, Trout under eight, or Barbel under twelve Inches Fish, nor fish, unless for Smelts, Loaches, Minnies, Bulheads, Gudgeons, or Eels, but with an Angle, or a Net of a Meash of two Inches and half, on Pain of 20 l. of which Justices of Peace may inquire, if no Presentment in the Leet within a Year. *Vide Leet, (L. 14.)*

By the *St. 5 El. 21.* Justices of Peace may inquire of such, who break Heads of Fish Ponds, or fish in several Ponds, &c. who shall pay treble Damages, three Months Imprisonment and seven Years Good Behaviour, unless the Justices think fit to remit it on Confession of the Fault, or unless the Party release such Surety.

By the *St. 3 Jac. 12.* None shall erect a Wear, &c. in five Miles of an Haven, on Pain of 10 l. nor fish with a Net of a less Meash than three Inches, or with a Canvas Net, to destroy the Fry or Spawn of Sea Fish, on Pain of forfeiting the Net and 10 s. to the Poor and Prosecutor, to be levied by Distress and Sale, on Warrant of one Justice or more, rendering the Overplus, &c.

By the *St. 13 & 14 Car. 2. 28.* Persons flocking about Boats, &c. of Filchard Craft in Cornwall and Devon, who refuse to depart being warned, on Complaint to a Justice of Peace, shall forfeit 5 s. to the Poor, or be set in the Stocks five Hours.

By the *St. 22 & 23 Car. 2. 25.* A Person convict, by Confession or one Witness, within a Month after the Offence, before any Justice of Peace, of taking Fish in a River, Pond, &c. or assisting thereto, without Consent of the Lord or Owner, shall pay to the Party, not exceeding treble Damage, and to the Poor not exceeding 10 s. what the Justice thinks meet, to be levied by Distress and Sale, &c. And in Default, to be committed not exceeding a Month, unless he give Bond with Surety not above 10 l. never to offend more.

And the Justice may destroy the Nets, &c. taken: But the Party may appeal to the Sessions which shall be final, unless the Title to the Land, or Fishery, be in Question.

By the *St. 4 & 5 W. & M. 23.* None shall keep any Net, &c. for taking Fish, other than the Owner or Occupier of a River or Fishery, or the Maker or Seller of such Nets for better Sale of them: And the Owner of a River or Fishery, or Occupier, or any authorized by them, may seize to their own Use Nets, &c. used,

or in the Possession of a Person fishing, &c. without Consent, &c. And any, authorised by Warrant from a Justice of Peace, may search Houses of suspected Persons, and seize Nets, &c. to their own Use or destroy them. Provided Fishermen, and Apprentices, may fish in navigable Rivers with lawful Nets, &c.

[By St. 5 G. 3. c. 14. Persons Stealing Fish from any River or Pond in a Park or Paddock fenced in and inclosed, or from a Garden, Orchard or Yard adjoining or belonging to a Dwelling-house, or aiding or receiving, to be transported for seven Years on Conviction at Gaol-delivery.]

[For stealing Fish in other inclosed Ground, private Property, Forfeiture of 5 l. to the Owner, or Commitment for six Months by one Justice.]

[If a Man is convicted of taking Fish, without saying of another Person, or in another Person's Pond, or without the Consent of the Owner, (or *stealing*, Q.) it is bad. *Rex v. Mallinson*, M. 32 G. 2. 2 B. M. 679.]

[In Rivers not navigable Land-owners have the Right of fishing on each Side, commonly to the Middle of the Stream: In navigable Rivers, it is *prima facie* in the King, and is publick: But a private Person may have an exclusive Right by Grant or Prescription. *Carter v. Murcot* H. 8 Geo. 3. 4 B. M. 2162.]

(B. 45.)
Fowling-
Hawks.

By *Ch. de For.* 9 H. 3. 13. Every Free-man shall have the Ayries of Hawks in his own Woods in the Forest of the King.

By the St. 34 Ed. 3. 22. He that finds an Hawk, &c. shall bring it to the Sheriff, who shall make Proclamation of it, and the Owner proving it to be his, shall have it, paying the Charge; if none challenge it in four Months, the Finder, if a Gentleman, otherwise the Sheriff, shall have it: But if any conceal or take away an Hawk, &c. he shall suffer two Year's Imprisonment, and pay the Value of it. And by the St. 37 Ed. 3. 19. Stealing of an Hawk is Felony.

By the St. 11 H. 7. 17. None shall take the Eggs of a Falcon, &c. out of the Nest, be it on his own or another's Ground, on Pain of Imprisonment for a Year and a Day, and Fine at the King's Will; a Moiety to the King, a Moiety to the Owner of the Ground where the Eggs were taken, and to be determined by Justices of Peace, &c. Nor shall any take or drive to other Coverts to breed in, or kill any Falcon, &c. on Pain of 10 l. a Moiety to him that will sue, by Action of Debt, by Examination before Justices of Peace, Information or otherwise, and a Moiety to the King.

By the St. 23 El. 10. None shall hawk where eared Corn is, without Licence, on Pain of 40 s. to the Owner, to be recovered by Action, Information, &c. *Vide Lect.* (L. 14.)

By the St. 7 Jac. 11. Any Convict by Confession, or two Witnesses before two Justices of Peace within six Months, of hawking at a Pheasant or Partridge, between the 1 July and last of August, shall be committed for one Month without Bail, unless he pay 40 s. for hawking, and 20 s. for every Pheasant and Partridge killed, to the Poor.

(B. 46)
Pheasants,
Partridges,
&c.

By the St. 11 H. 7. 17. None, of whatever Degree, shall take Pheasants or Partridges on the Freehold of another, without his Licence, on Pain of 10 l. a Moiety to the Owner of the Land, a Moiety to the Prosecutor by Action of Debt, or by Bill or otherwise; nor the Eggs of Swans out of the Nest, on Pain of Imprisonment for a Year and a Day, and Fine at the King's Will, a Moiety to the King, a Moiety to the Owner of the Swans.

By the St. 23 El. 10. None shall in the Night take a Pheasant, or Partridge, on Pain of 20 s. for every Pheasant, and 10 s. for every Partridge, a Moiety to the Lord of the Manor, a Moiety to the Prosecutor, (or if either release his Moiety,) to the Poor, by Action, &c. And Justices of Peace at Sessions may hear, &c. and any Justice bind the Offender to Sessions: And if he pay not the Penalty in ten Days, shall be committed for a Month without Bail, and find Surety not to offend in two Years. *Vide Lect.* (L. 14.)

And none shall hunt with a Spaniel, where eared Corn is, without Licence, on Pain of 46 s. to the Owner.

By the St. 1 Jac. 27. Any Convict by Confession, or two Witnesses at Sessions, or before two Justices of Peace, of taking, &c. any Pheasant, Partridge, or House-

Dove

Dove, or Eggs of Pheasant, Partridge, or Swan, shall be committed for three Months without Bail, unless he pay 20*s.* for every Fowl and Egg to the Poor, or after a Month's Commitment shall find two Sureties of 20*l.* by Recognizance before a Justice not to offend more. (So, by the *St. 7 Jac. 11.* If Convict by one Witness of taking a Partridge, or Pheasant.)

And any not having 10*l.* *per Annum* Inheritance, 30*l.* *per Annum* for Life, or 200*l.* in Goods, or the Son of an Esquire, &c. Convict, &c. for keeping a Setting Dog, or Net for Partridge, or Pheasant, shall be committed, &c. unless he pay 40*s.* to the Poor.

And he who sells, or buys to sell, any Pheasant, or Partridge, not reared up in the House, or brought from beyond Sea, forfeits 20*s.* for every Pheasant, and 10*s.* for every Partridge.

By the *St. 7 Jac. 11.* Any Convict, within six Months, by Confession or two Witnesses before two Justices, for hawking at a Partridge, or Pheasant between the 1st July and last of August, shall be committed for one Month without Bail, unless he pay 40*s.* for every hawking, and 20*s.* for every Pheasant, and Partridge killed, to the Poor of the Parish.

And a Constable, by Warrant of two Justices, may search Houses of Persons not qualified, and seize Setting Dogs, and Nets; But Persons having a Warren, or Lords of a Manor, or Inheritance of 40*l.* *per Annum*, 80*l.* *per Annum* for Life, or Goods of 400*l.* Value, or their Servants, may take Pheasants, or Partridges on their own Ground, between Michaelmas and Christmas.

By the *St. 22 & 23 Car. 2. 25.* A Lord of a Manor, not under Esquire, may under Hand and Seal authorise Gamekeepers within his Royalty, who may seize setting Dogs, Nets, &c. for killing Pheasants, Partridges, or other Game used within his Manor by any unqualified by this Act, (*ut ante* (B. 43) for shooting,) or by Warrant of Justice of Peace may in the Day-time search Houses of suspected Persons unqualified, and seize setting Dogs, Nets, &c. to the Use of the Lord, or destroy them.

A Manor is a Royalty named by the Statute. (*Vide Lut. 1506.*)

So, an Hundred with a Leet. *Semb. Lut. 1506.*

By the *St. 9 Ann. 25.* but one Gamekeeper in one Manor.

By the *St. 3 Geo. 11.* one qualified, or a Servant.

By the *St. 4 & 1 W. & M. 23.* A Constable, by Warrant of a Justice of Peace, may enter and search Houses, &c. of suspected Persons unqualified: And if Pheasant, Partridge, Pidgeon, Fowl, or other Game be found, may carry the Offender to the Justice of Peace; and if he cannot satisfy the Justice how he came by it, or in a set Time produce the Seller, or prove the Sale, he shall pay for every Fowl, not less than 5*s.* nor more than 20*s.* a Moiety to the Informer, a Moiety to the Poor, to be levied by Distress and Sale, &c. And if no Distress shall be committed to the House of Correction, not less than ten Days nor more than a Month, there to be whipt, and a Person produced, &c. who shall not give such Evidence to the Justice of his Innocence, and a Person convict of having or using any Setting Dog, Nets, &c. for Destruction of Fowl, shall forfeit, &c.

By *St. 2 G. 3. c. 19.* None shall take, kill or have any Partridge, from 12 February to 1st September, nor Pheasant from 1st February to 1st October, (except taken in lawful Time, and kept in a Mew) nor any black Game from 1st January to 20th August, nor Grouse from 1st December to 25th July, on Pain of 5*l.* *per Bird.*]

[All Penalties on the Game Laws sued for in Westminster-Hall shall go to the Informer, and no Part to the Poor of the Parish.]

[*St. 2 G. 3. c. 29.* Inflicts 20*s.* Penalty for killing Pigeons, to be paid to the Prosecutor on Conviction before one Justice, or Commitment to hard Labour from three to one Month]

[By *St. 13 G. 3. c. 55.* None shall kill or have black Game from 10th December to 20th August, nor Grouse from 10 December to 12th August, on Pain of from 20*l.* to 10*l.* for first, and from 30*l.* to 20*l.* for subsequent Offence, by Suit or before Justice.

(B. 47.)
Hunting,
Deer-steal-
ing

As to Hunting in a Forest, *Vide Chase*, (H. 1, &c.)
By the St. 13 R. 2. 13. He that hath not 40*s.* *per Annum* Lands, or a Clerk that hath not 10*l.* *per Annum* Revenue, shall not keep a Dog to hunt, or Engines to take or destroy Deer, &c. on Pain of a Year's Imprisonment, which Justices of Peace may determine.

By the St. 19 H. 7. 11. None shall keep Deer-Hays or Buckstall, save for his own Park, &c. on Pain of 10*l.* *per Month*; nor use Stalking for Deer in other Park, &c. without Licence, on Pain of 10*l.* of which Justices of Peace may inquire, and commit till Surety found for Payment of the Forfeiture, the 10th whereof shall go to the Justices.

By the St. 5 El. 21. and 3 Jac. 13. None shall kill or chase Deer in a Park, or inclosed Ground, without Licence, on Pain of treble Damages to be assessed by the Justices, (or, by the St. 7 Jac. 13. of 10*l.* at Election of the Owner,) three Months Imprisonment, and Surety for Good Behaviour for seven Years, which the Owner, or Justice, on Confession, may release.

And if any Person not having 40*l.* *per Annum*, nor 200*l.* in Goods, nor inclosed Ground of 40*s.* *per Annum* for Deer, keep Dogs, &c. to kill Deer, &c. any having 100*l.* *per Annum* may take them for his own Use. *Vide Post*, (B. 48.)

*[*Vide the*
St. 7 Jac. 13.]

So, by the St. 13 Car. 2. 10. Any Convict by Confession, of one Witness before any Justice of Peace, being prosecuted within six Months (or by the St. 9 Geo. 22. in three Years) of hunting, &c. Deer, &c. in Park, &c. without Consent, or of Aiding, &c. forfeits 20*l.* a Moiety to the Owner, a Moiety to the Informer, to be levied by Distress, &c. And in default to be committed to the House of Correction for six Months, or to Gaol for a Year, and find Sureties, &c. for another Year.

And he who aids by his Dogs, &c. will be within the Statute, though he be not present. *Per 3 J. Holt. cont. Sal. 542.*

So by the St. 5 Geo. 15. He shall give Bond of 50*l.* to be of Good Behaviour and not offend again. And a Park-keeper, &c. convict shall pay 50*l.*

By the St. 3 & 4 W. & M. 10. Any Convict, &c. *ut supra*, being prosecuted in twelve Months (or three Years by the St. 9 G. 22.) for hunting in any Chase, Park, &c. shall forfeit 20*l.* &c.

If for wounding, taking, killing, 30*l.* for every Deer, a third to the Informer a third to the Poor, a third to the Owner to be levied, &c. *ut supra* by Warrant of Justices, &c. And he may be detained till the Return of the Warrant not exceeding two Days, and if no Distress, shall be imprisoned a Year, and pilloried an Hour some Market-Day in the next Town. (And by the St. 5 Geo. 28. he shall be transported for seven Years.)

And by the same St. 3 & 4 W. & M. 10. A Constable by Warrant of Justices of Peace may enter and search, (as in case of stolen Goods,) Houses of any suspected, and apprehend the Person, if he find Venison, Skins, Toils, who shall forfeit 30*l.* to be levied, &c. if he cannot satisfy the Justice how he came by or bought them.

And any Convict by one Witness of pulling down in the Night, Pales, &c. of a Park, Chase, &c. shall be imprisoned three Months. And by the St. 5 Geo. 15: shall also pay the Penalty of killing a Deer. The Justice of Peace ought to make the Conviction for an Offence against these Statutes pursuant to the Statutes. 2 *Sbo.* 489.

If several are convicted of the same Offence, each of them forfeits 30*l.* R. 1 *Sal.* 182. 2 *Sbo.* 490.

If the Party has not sufficient Distress, the Justice ought to make an Adjudication, and then determine, that he be committed after two Days for the Space of fix, or twelve Months. R. *Cartb.* 509.

If the Party be absent, he ought to make a Warrant to distrain: and if he has no Distress, after two Days a Warrant for Commitment. R. *Cartb.* 509.

If a Glover has Skins found upon him, and says, that A. sold them to him; A. may be convicted, unless he gives a good Account, &c. R. 1 *Sal.* 383.

The Conviction ought to shew the Offence to be strictly within the Statute. 1 *Sal.* 378.

That

That he had no Lands, &c. (where that is a Qualification required) at the Time of the Offence. R. 3 Mod. 280.

It ought to shew the Day of the Fact. R. 1 Sal. 369. Vide 5 Mod. 447. Vide *infra*.

Or, that he killed three Deer between such a Day and such a Day. R. 1 Sal. 378. Carth. 502.

That the Prosecution was commenced within twelve Months, though the Conviction need not be within that Time. R. 1 Sal. 383.

It ought to shew the Summons and Appearance, or Default. Mod. Ca. 41.

And it will be bad, if it shews a Summons upon which he appeared Tuesday 7th April, which was impossible, for 7th April was Friday. R. Mod. Ca. 41. 1 Sal. 381.

But the Conviction need not recite all the Circumstances at large. R. 1 Sal. 369.

If it says, that he unlawfully killed, it is sufficient, without shewing how, R. 1 Sal. 378. Carth. 503.

That it was done in *Foresta usitata*; for that imports that it was then used. R. 1 Sal. 377.

In *loco in ambulo Chasae*; for it imports that it was in the Chase. R. 1 Sal. 383.

So it is not necessary to say *Contra Pacem*; for it is the Suit of the Party, not of the King. R. 1 Sal. 378. Carth. 503.

Nor to shew, whether convicted by Evidence, or Confession. 5 Mod. 447.

Nor to shew the Oath. R. 1 Sal. 369.

So a Summons is not necessary, if the Defendant appears. R. 1 Sal. 383. Carth. 501.

So it is sufficient to say, *quod convictus est*, without adding *quod forisfaciet*, &c. for that is only Execution and Consequence. R. 1 Sal. 378, 383. 2 Mod. Ca. 175.

Nor is it necessary to shew the Day of the Fact, if it be within a Year. 5 Mod. 446, 447. Vide Sal. 369. Vide *supra*.

Nor the Distribution of the Penalty, viz: a third to the Poor, &c. R. 1 Sal. 383.

So a Man is not within the Statutes if he hunts, &c. where he claims a Title. R. 1 Sal. 369.

But that shall not be proved by *Affidavit*, where he is convicted. 1 Sal. 369.

If a Conviction be affirmed in B. R. Execution shall be there by *Levari facias*, *Fieri facias*, or *Capias*. 1 Sal. 369, 379.

And if the Owner die before Execution, upon an *Affidavit* and Suggestion upon the Roll, his Executor shall have it. R. 1 Sal. 378.

The Process by *Levari*, or *Fieri facias* out of B. R. shall be to the Sheriff, who may thereupon make Sale. R. 1 Sal. 379.

But an Attachment does not lie for Non-payment of the Penalty. R. 1 Sal. 369.

If a Statute says, a Penalty shall be levied by Distress, without more, it may be sold. R. 2 Jon. 25. 1 Sal. 379.

[May convict Deer-stealer on St. 3 & 4 W. & M. if summoned, tho' he doth not appear. *Rex v. Simpson*, H. 3 G. Str. 44.]

[If the Justice in the Warrant to commit Offender for want of Distress, on St. 3 & 4 W. & M. says, it has been *certified* to him by the Constable that there is not sufficient Distress, it is good, without reciting the Warrant of Distress and the Return, for the Word *certified* imports it to be in a legal Manner. *Rex v. Whitlock*, H. 6 G. Per Pratt C. J. and Fortescue J. *contra Eyre*, J. Str. 263.]

[If the Conviction is removed by *Certiorari* and confirmed, the Prosecutor has his Election to take Execution by a *Levari*, or to apply to the Justice. *Ibid.*]

[And if the Prosecutor applies to the Justice, the Warrant of Commitment need not set out the Confirmation, for the Court will take notice of their own Records; and the Statute here does not give the Justice a new Jurisdiction, but only revives the old which was suspended by the *Certiorari*. *Ibid.* Per Pratt C. J. and Fortescue J. *contra Eyre* J.]

[If

[If the Defendant is convicted on the Evidence of the Informer, it is bad. *Rex v. Tilly T.* 6 G. Str. 316. *Rex v. Stone*, M. 2 G. 2. *Ld. Raym.* 1545.]

[If the Conviction is only *convictus est*, without *quod satisfaciatur*, it will be qualified. *Rex v. Hawks*, H. 3 G. 2. Str. 858.]

[In Conviction for killing Deer in a *Purlieu*, it cannot be averred that it is a Place where Deer are usually kept, and need not be averred that the *Purlieu* was not the Defendant's. *Rex v. Calcutt*, M. 13 G. 2. Str. 1119.]

[A Man may be convicted on his Confession to a Witness, who deposes it before the Justice. *Rex v. Dore*, M. 12 G. 2. *Andr.* 301.]

[He may be convicted on his Confession, tho' it does not appear that he confessed killing the same Deer which is mentioned in the Information. *Ibid.* Sed. 2. for this seems to amount to saying he may be convicted of a Fact for which there is no Information.]

[By St. 16 G. 3. c. 30. The former Acts relating to Deer-stealing are repealed.]

[Every Person without Owner's Consent hunting or attempting to kill or aiding thereto, in a Forest, &c. or inclosed Ground where Deer are usually kept, forfeits 20*l.* every Person killing, wounding, taking or carrying away or aiding therein, 30*l.* for each Deer; if the Keeper, double; second Offence whether the same with the first or any other aforesaid Offences, Felony.]

[Justice to transmit Conviction to Quarter Session, Copy signed by Clerk of Peace Evidence.]

[Justice may grant Search-Warrant, and if any Part of Deer, or any Slip, Noose, Toyle, Snare, or Engine, for unlawfull killing found and good Account not given, Penalty from 30*l.* to 10*l.*]

[If the Party cannot be convicted Justice may summon every Person through whose Hands any Part of Deer has passed and whoever cannot give good Account forfeits from 30*l.* to 10*l.*]

[On Oath of one Witness that any Person hath had any Part of Deer, and shall be reasonably suspected to have come dishonestly or unlawfully thereby, he, not giving good Account, forfeits as before.]

[Person setting Net, Wire Slip, Noose, Toyle or Engine, forfeits from 10*l.* to 5*l.* for every subsequent Offence from 20*l.* to 10*l.*]

[Pulling down Pales or Wall 30*l.*]

[If Person carrying Fire-Arms or Sword, Staff, or other offensive Weapon, shall come into any Ground inclosed or not inclosed where Deer are usually kept, with Intent to hunt, take, kill, or take away, the Keeper may seize such Fire-Arms, Slips, and Engines (Sword, Staff, or offensive Weapon omitted) as Game-keepers of Manors may; beating Keeper or his Assistant there in Execution of Office, or attempting to rescue any Person in lawful Custody of such Keeper or Assistant, Felony.]

[On Information on Oath Justice (except where Summons is specially directed) may issue Warrant, &c. where Summons is directed, on Proof of Service personally or at usual Abode, and, on Non-appearance, to proceed by Warrant.]

[Penalties to be recovered before one Justice on Proof by Oath of one Witness or Confession, half to the King to be paid for his Use into the Hands of such Person as Justice appoints, half to Informer, on Non-payment (with Charges) immediately on Conviction, Distress, in default Imprisonment in common Gaol for one Year or till sooner Payment, (except as excepted)]

[Offender may be kept in Custody three Days for Return of Distress Warrant; or if it appears he has not sufficient Distress to commit immediately without Distress Warrant.]

[Offenders for first Offence may give two Sureties to pay Penalty and Charges in six Days (including Day of Conviction) on Non-payment to commit the Party and Sureties for the Time aforesaid, or sooner Payment.]

[Keepers may apprehend on the Spot Persons hunting, &c. and carry them before Justice.]

[Offender in Prison for first Offence on Consent of the Prosecutor and Owner or Keeper may be discharged by Quarter-Session.]

[Offender discovering other Offender so as he be convicted not liable.]

No *Certiorari* unless Offender bound with Sureties in 100*l.* to Prosecutor to pay in thirty Days after Conviction confirmed or *Procedendo* granted, full Costs and Damages to be ascertained on his Oath; and to the Justice in 60*l.* to prosecute *Certiorari* with Effect and pay the Forfeiture or surrender in thirty Days, in default Justice to proceed as if no *Certiorari* granted.]

After Conviction confirmed, and the Rule of Court delivered to the Justice he may proceed as if *Procedendo* granted.]

[If no *Certiorari*, Person aggrieved may appeal to Quarter Sessions, held twenty Days after Conviction, giving six Days Notice to Prosecutor, and Recognizance to try Appeal, &c. at Quarter Session next after ten Days from Conviction, their Determination final.]

[Persons having paid the Penalty, or imprisoned, may appeal on Recognizance, without Sureties, Penalty remaining in Justices Hands or Person in Prison.]

[Proceedings not to be set aside for want of Form, but the Appeal decided on the Merits only. No *Certiorari*.]

[Prosecutions in twelve Months.]

By the *St.* 13 *R.* 2. 13. None (*ut Ante*), shall keep Dogs or Nets or Ferrets to destroy Conies, &c. on Pain of a Year's Imprisonment, (*ut Ante*, (B. 47.) for Conies, (B. 48.) Deer-stealing.)

By the *St.* 3 *Jac.* 13. None shall kill Conies in an inclosed Ground without Licence, &c. on Pain, (*ut Ante*, for Deer.) And a Person having 100*l.* *per Annum* may seize the Dog, Ferret, Net, &c. kept to kill Conies by a Person not having 40*l.* *per Annum*, &c. Provided not to extend to chasing in Day-time.

By the *St.* 22 & 23 *Car.* 2. 25. Any Convict, by Confession or one Witness, within a Month before a Justice of Peace, for chasing or taking any Conies, in any Ground, lawfully used for keeping them though not inclosed, without Authority, &c. shall pay treble Damage, have Imprisonment for three Months, and after till they find Surety for good Abearing.

And any Convict, &c. for taking Conies in the Night on the Border of a Warren, &c. unless the Owner or Occupier of the Soil, or employed by him, shall pay Damage to the Party as the Justice thinks fit, and to the Poor not exceeding 10*s.* and for Non-payment shall be committed to the House of Correction not above a Month.

And a Lord of a Manor, &c. may appoint a Game keeper, who may seize Dogs, Ferrets, &c. for taking Conies, &c. (*ut Ante*, B. 46.) for Pheasants.)

[By *St.* 5 *G.* 3. c. 14. Persons entering in the Night-time into a Warren, or Ground used for keeping Conies, (tho' not inclosed) and killing Conies, or Aiding, may be transported for seven Years, or otherwise punished at Assizes.]

[This extends not to killing Conies in the Day-time on the Coast of *Lincolnshire*.]

By the *St.* 13 *R.* 2. 13. None not qualified, *ut Ante*, shall keep a Greyhound, Hound, &c. to destroy Hares or other Gentleman's Game, on Pain of a Year's Imprisonment. (B. 49.) Hares, &c.

By the *St.* 14 *H.* 8. 10. Justices of Peace at Sessions may inquire of those who trace Hares in the Snow, who shall pay 6*s.* 8*d.* to the King. *Vide Leet*, (L. 14.)

By the *St.* 1 *Jac.* 27. Any Convict, by Confession or two Witnesses, before, two Justices of Peace for taking Hares by Guns, Snares, tracing in Snow, &c. shall be committed for three Months without Bail, unless he pay to the Poor 20*s.* for every Hare, &c. or in a Month after Commitment shall give Surety of 20*l.* to two Justices of Peace not to offend more.

None shall sell, or buy to sell, any Hare, on Pain of 10*s.* a Moiety to the Prosecutor, a Moiety to the Poor.

And any not having 10*l.* *per Annum* Inheritance, 30*l.* *per Annum* for Life, 200*l.* in Goods, or the Son of an Esquire, &c. convict, &c. for keeping a Greyhound, &c. to destroy Hares, &c. shall be committed, &c. unless he pay 40*s.* to the Poor.

By the *St.* 22 & 23 *Car.* 2. 25. A Lord of Manor, &c. may appoint Game-keepers who may seize Greyhounds, &c. used by a Person not qualified, (*ut Ante*, (B. 43.) for Shooting,) and may search, (*ut Ante*, (B. 46.) for Pheasants and Partridges.)

And any Convict, by Confession or one Witness, in a Month before any Justice of Peace for setting Snares, &c. shall pay to the Party what the Justice thinks fit, and to the Poor not above 10s. and for Non-payment be committed not above a Month to the House of Correction.

By the St. 4 & 5 W. & M. 23. A Constable by Warrant, &c. may enter and search Houses, &c. of suspected Persons unqualified, and if an Hare, &c. be found, may carry the Offender to a Justice of Peace, and if he cannot satisfy the Justice how he came by it, or produce the Seller, or prove the Sale, or if, by the same Evidence, he be convicted of having or using a Greyhound, Ferrets, &c. or if the Person produced cannot give such Evidence to the Justice of his Innocence, he shall pay (*ut Ante*, (B. 46.) for Pheasants.)

The St. 4 & 5 W. & M. 23. does not alter the Manner of Conviction for having a Greyhound, &c. which was prescribed by the St. 22 & 23 Car. 2. 25. and therefore, the Conviction ought to be within a Month, and by Confession, or one Witness. *Per Cur. Trin. 2 Ann. B. R.*

By the St. 5 Ann. 14. (which confirms all the former Statutes *in Esse*, and is made perpetual by the St. 9 Ann. 25.) If any, not qualified, keep or use any Greyhound Setting Dog, &c. to destroy the Game, and be convicted by one or two Witnesses, before a Justice of Peace where the Offence was committed, he shall forfeit 5*l.* a Moiety to the Informer, a Moiety to the Poor, to be levied by Distress and Sale by Warrant of such Justice; or if no Goods, to be sent to the House of Correction for three Months, and for any subsequent Offence for four Months.

So, if he be convicted by his Confession. *Per 3 J. 2 Mod. Ca. 64.*

The Conviction shall be quashed, if it does not shew, that the Party was not qualified. *R. Mod. Ca. 40.*

Tho' it says, that he was *Persona dissoluta*. *Mod. Ca. 40.*

If there be not Proof, that the Hare, &c. was found upon him. *Mod. Ca. 57.*

[A Conviction for keeping a Gun, on stat. 5 Ann. c. 14. is ill, and must be quashed. *Rex v. Gardner, T. 11 G. 2. Str. 1098. And. 255.*]

[A Gun is not necessarily to be taken to be an Engine to kill Game, and if on *Trover* Defendants justify, they must alledge and shew the Use. *Wingfield v. Stratford, H. 25 G. 2. 1 Wils. 315.*]

[Hound is not within stat. 5 Ann. c. 14. *Hooker v. Wilks, H. 13 G. 2. Str. 1126.*]

[Conviction for keeping Greyhound and killing Hares, quashed for not setting forth that Defendant was not qualified, *as he has not 100*l.* &c.* The Defendant appeared.]

[Conviction for keeping a Lurcher, good. *Rex v. Filer, H. 8 G. Str. 496.*]

[May be on Confession. *Rex v. Gage, H. 9 G. Str. 546.*]

[If the Conviction only avers generally that Defendant is not qualified, without averring that he has not the particular Qualifications in the Statute, it is bad. *Rex v. Hill, H. 12 G. 2. 2 Ld. Raym. 1415.*]

[The Conviction must set out the Summons. *Rex v. Hawker, T. 8 G. 2. B. R. H. 130.*]

[A Conviction is good which lays the Offence to be done in a Ville, without naming the Parish; and if the Ville is extraparochial, the Informer shall have the whole Penalty. *Rex v. Wyatt, P. 13 G. 2. Ld. Raym. 1478.*]

[If the Justice commits the Person convicted, without endeavouring to levy the Penalty by Distress, an Action for false Imprisonment lies. *Hill, v. Bateman, T. 12 G. 2. Str. 710.*]

[If a Gamekeeper shoot an unqualified Person's Dog, who thereupon shoots the Gamekeeper's, and behaves insolently, the Judge will direct very considerable Damages. *Per Hardwicke C. Roy v. D. of Beaufort, T. 1741. 2 Atkyns 190.*]

[A Conviction on the 4 & 5 W. & M. is good, without saying the Party is a dissolute Person, or that he did *unlawfully* hunt, or that the Justice was *then* a Justice. *Rex v. Chipp, T. 12 G. 2. Str. 711.*]

[A Clothier and Alehouse-keeper was found by Jury to be an inferior Tradesman, within 4 & 5 W. & M. *Wickham v. Walker, M. 11 G. 2. Barnes 125.*]

[A Clothier was determined so to be by B. R. *Bennet v. Tbalbois, P. 9 W. 3.* It is said *Holt C. J.* held every Tradesman not qualified to be an inferior Tradesman.

man: So thought *Batburst J. and Clive J. contra Willes C. J. and Noel J. Buxton v. Mingay*, T. 30 & 31 G. 2. 2 *Wils.* 70.]

[Indictment does not lie for killing Hares. *Rex v. Towning*, M. 12 G. 2. 302.]

[By St. 26 G. 2. c. 2. Actions for the Recovery of any Penalty may be brought before the End of the Second Term after the Offence.]

[By St. 28 G. 2. c. 12. Every Person, qualified or not, who offers to Sale Game is liable to the Penalties on Higlers, &c. offering to Sale, by 5 *Ann. c.* 14. And Game found in the Possession of Poulterer, &c. is deemed exposing to Sale.]

[By St. 10 G. 3. c. 18. Person stealing any Dog, or receiving it knowing it to be stolen, convicted before two Justices forfeits from 30*l.* to 20*l.* or Imprisonment from twelve to six Months, and for second Offence from 50*l.* to 30*l.* or from eighteen to twelve Months Imprisonment, and whipping.]

[Justices may grant Search-Warrant, and if Dog or Dog-Skin found, to restore it, the Party knowing it stolen, or the Skin to be the Skin of a Dog stolen, subject to same Penalties: Appeal final, and no *Certiorari*.]

[By Stat. 13 G. 3. c. 80. Person killing Hare, Pheasant, &c. or using Gun, Dog, Engine, &c. to kill or take, between seven at Night and six in the Morning, from 12th *October* to 12th *February*, and between nine at Night and four in the Morning, from 12th *February* to 12th *October*, convicted before one Justice, forfeits for first Offence from 20*l.* to 10*l.* and for second from 30*l.* to 20*l.* and Costs, or for want of Distress shall be committed for three Months; and for Offence after second Conviction, shall be committed till Quarter Session, or give Surety to appear to Indictment, and if convicted, forfeits 50*l.* and Costs, or for want of Distress, committed from twelve to six Months, and publicly whipt. half Forfeiture to Informer, half to Poor.]

[Killing or using Engine on *Sunday* or *Christmas-Day*, liable to like Penalty.]

[Justice where Offence committed may grant Warrant, to be indorsed by Justice in another County where Offender lives, and the Offender thereby be brought before the first Justice, or Distress made. Appeal, no *Certiorari*.]

By the St. 8 G. 19. A Plaintiff may proceed to recover a pecuniary Penalty, by a Conviction before a Justice of Peace, or by Action of Debt, &c. with double Costs, before the End of the next Term after the Offence.]

Highway.

As to Highway, *Vide Chimin.*

Hue and Cry.

As to Hue and Cry, *Vide Hundred*, (C. 1, &c.)—*Pleader*, (2 S. 1, &c.)

(B. 50.) Labourers.

By the St. 5 *El.* 4. In Hay or Harvest-time, any Justice of Peace, or Constable on Request, &c. may cause all Artificers, meet to labour, to serve by the Day for Reaping or Inning of Corn or Hay, and on Refusal complained of to the Constable, &c. he shall set him in the Stocks for two Days and a Night, and for Neglect himself shall lose 40*s.*

Persons accustomed to go into other Shires for Harvest-work, and having none in their own Town or County, may still do so, if not retained in Service, and having a Testimonial from a Justice of Peace or Mayor, for which they shall give but one Penny.

Justices of Peace, or Mayor, by the St. 5 *El.* 4. at *Easter Sessions*, &c. may appoint Wages of all Labourers, Artificers, and Workmen, by the Day, Week, Month, or Year, with Meat or without, and by the Great, for mowing, reaping, threshing, ditching, &c. by the Rod, Foot, &c. and certify the same into *Chancery*, &c. Or, by the St. 1 *Jac.* 6. cause the same ingrossed under their Hands and

(B. 50.)
Who are com-
pellable to
work.
*Vide Appren-
tices, Post*, (B.
53, &c.)—
Servants,
Post, (B. 58,
&c.)

(B. 51.)
For what Wa-
ges.

and Seals to be proclaimed, &c. And if any give more Wages, on Conviction before the said Justices of Peace or Head Officers he shall forfeit 5*l.* and be imprisoned ten Days without Bail: And any Person taking more Wages, on Conviction before the said Justices or two of them, shall be imprisoned twenty-one Days without Bail. And every Promise, Gift, &c. contrary is void.

(B. 52.)
Misdemean-
or.

By the *St. 5 El. 4.* All Labourers, hired by the Day or Week, betwixt the Midst of *March* and *September*, shall continue at Work from five in the Morning till between seven and eight at Night, unless two Hours and an half for Meals; and from Spring of Day till Night betwixt the Midst of *September* and *March*, on Pain of 1*d.* for every Hour absent.

And none, retained for any Work in the Great, shall depart without finishing it, unless for Non-payment of Hire, for the Service of the Queen, with Licence of the Master, or for other lawful Cause, on Pain of Imprisonment for a Month without Bail, and Forfeiture of 5*l.* to be recovered by Action of Debt in the King's Courts of Record.

And if a Labourer maliciously make an Assault or Affray on his Master, Mistress, or Dame, or other who hath the Charge or Oversight of him, on Conviction before two Justices of Peace, or Mayor, &c. by Confession or two Witnesses, he shall suffer Imprisonment for a Year, or less, at the Discretion of the said Justices, or Mayor and two others of the Corporation: And, if the Offence require, shall receive such other open Punishment, as the Justices of Peace at the Quarter Sessions, or the Mayor and four of the Corporation, shall think meet, so as not to extend to Life, or Limb.

[By 13 G. 2. c. 8. If any Person employed in the Woollen, Linen, Fustian, Cotton or Iron Manufactures, shall secrete, sell, or illegally dispose of any Materials he is intrusted with, or reel short or false Yarn, and is convicted before one Justice, he shall forfeit double Value and Costs, or in default be committed to hard Labour, for fourteen Days and whipt; and for second Offence, he shall forfeit four-times the Value and Costs, or on default be committed to hard Labour for three Months, and publicly whipt once or oftner.]

[Receivers liable to the same Penalties.]

[Forfeitures, half to Sufferer, half to Poor.]

§. 4. The same for Workers in Leather.]

§. 6. Workers in Leather to be paid in Money, and to have Materials delivered to them with a Declaration of the Quantity, on Pain of double what is due to them; and Workman to pay double Damages for any Default in his Work.]

§. 7. Wages, Demands, Frauds, Abuses Neglects and Defaults in the Leather-Manufactory to be determined by two Justices.]

§. 8. Journeyman in Leather leaving his Work, to be committed to hard Labour for a Month by one Justice.]

[Persons aggrieved may appeal, on eight Days notice, to Quarter-Sessions.]

[By 20 G. 2. c. 19. One Justice may hear Master's Complaint of Misdemeanors, Miscarriage or ill Behaviour of yearly Servant in Husbandry, or any Artificer, Handicraft, Miner, Collier, Keelman, Pitman, Glassman, Potter, or other Labourer, and punish by Commitment to hard Labour, not exceeding a Month, or by abating Wages or by Discharge from Service; and so to hear Servant's Complaint, and discharge him gratis.]

[Appeal lies to Quarter Sessions, which determines finally, with Costs to 40*s.* and no *Certiorari* lies.]

[By *St. 31 G. 2. c. 11.* This Act is extended to Servants in Husbandry for any Time less than a Year.]

[By *St. 22 G. 2. c. 27.* Persons employed in Felt, Hat, Woollen, Linen, Fustian, Cotton, Iron, Leather, Fur, Hemp, Flax, Mohair or silk Manufactures, unlawfully disposing of Materials, and convicted on Oath (or Affirmation of Quaker) of Master, or other Witness, before one Justice, shall be committed to hard Labour, to House of Correction or Prison for fourteen Days, and once publicly whipt; for second Offence from three to one Month, and to be publicly whipt, twice or oftner.]

[Person

[Person buying or receiving to forfeit 20*l.* or on Nonpayment fourteen Days Commitment to hard Labour, and whipt once or oftner. Second Offence 40*l.* or Commitment from three to one Month, and whipt twice or oftner. Forfeitures to the Poor. Person convicted of buying may appeal, giving Security to prosecute with Effect in double the Sum.]

[On Conviction, Justice may grant Search-Warrant for the House of the Convict; and if any Materials are there found, if the Convict in twenty-four Days proves his Property, they shall be delivered to him; if not, sold for the Poor. The Justice shall give notice to Convict to attend, and if in Custody the Keeper shall bring him. Person aggrieved may appeal, and *stat.* 23 G. 2. c. 13. settles the Form of Conviction.]

[If a Workman does not return the remaining Materials, on twenty-one Days Demand, it shall be deemed Embezzling, and punished as such.]

[Person working for another Master, before he has compleated the Work to which he was first hired, and which was first delivered, to be committed to hard Labour, not exceeding a Month.]

[By *St.* 27 G. 2. c. 7. Persons employed in Watchmaking, &c. who shall embezzle, &c. any Materials, forfeit 20*l.* or be committed to hard Labour for fourteen Days, if not sooner paid; if not paid two Days before Expiration, to be whipt at the Market-Place; for second or subsequent Offence 40*l.* or be committed to hard Labour from three to one Month, if not sooner paid; if not paid seven Days before Expiration, to be whipt twice or oftner.]

[Buying or receiving the same Penalties; the Forfeitures to make Satisfaction, and then to the Poor.]

[Appeal on Recognizance; Sessions determine finally with Costs, and no *Certiorari.*]

[By *stat.* 6 G. 3. c. 25. Artificers, Labourers, and others who contract, leaving Service before the Terms of their Contracts compleated, or being guilty of Misdemeanor, may be committed from three to one Month: Power of Appeal.]

St. 13 G. 3. c. 68. Impowering Justices, &c. to regulate the Wages of Workmen in Silk-Manufacture.

[*Stat.* 13 G. 2. c. 25. Persons employed in the Woollen-Manufactory not returning Implements or Materials, or damping the Wool, or picking off the Mark, shall be committed by one Justice for a Month; if Person absconds, or sells Materials, &c. Justice may issue Search-Warrant, and the Person where found liable to like Punishment; for second Offence committed till Quarter-Sessions, and if found Guilty, imprisoned for three Months, for subsequent Offences six Months, and whipt.]

[By 14 G. 3. c. 44. Reeling false is 20*s.* to 5*s.* first Offence; 5*l.* to 40*s.* 2d Offence, and Imprisonment and hard Labour for one Month, and Whipping.)

(B. 53.) Apprentices.

So Justices of Peace have Jurisdiction by several Statutes for the good Order, or Regulation of Apprentices. *Vide Labourers, Ante, (B. 50, &c.)*

By the *St.* 5 *El.* 4. Justices of Peace, and Mayor, &c. shall meet yearly between *Michaelmas* and *Christmas*, and between *Lady-Day* and *Midsummer* to inquire of and execute all Articles of that Statute. And shall have 5*s.* *per diem* apiece for every Day (not exceeding three Days at a Time) whereon they shall meet for such Purposes to be paid out of the Forfeitures, &c. in such Manner as at Quarter Sessions: And two Justices of Peace, (1 *Quor'*) and Mayor, &c. may hear and determine all Offences, &c. by Indictment, &c. at the Sessions and award Execution and estreat Fines, &c. A Moiety whereof shall go to the Queen and a Moiety to the Prosecutor; but, in a Corporation, shall go to the Corporation, to be levied by a Person appointed by the Mayor, &c. in such Manner as any Fines, &c. granted to them by Charter. *Servants, Post, (B. 58, &c.)*

Though the Statute gives the Forfeitures in a Borough to the Corporation, yet that shall be intended only of the King's Moiety, and not the Moiety of the Informer. *Dub. Mo.* 886. *Hob.* 183. *R. Cro. Car.* 316.

By the *St.* 5 *El.* 4. Every Householder twenty-four Years of Age, using an Art, Mistry or Manual Occupation in a City, or Town Corporate, may take as (B. 54.) Who may take them;

Apprentice by Indenture for seven Years at least, as in the City of *London*, the Son of a Free-man, not using Husbandry, nor being a Labourer, but dwelling in the same or other City or Corporation, so as his Time expire not till his Age of twenty-four Years: And in a Market Town may take Apprentice, &c. the Child of an Artificer in the same or other Market Town, not using Husbandry, nor being a Labourer.

Provided, a Merchant, Mercer, Draper, Goldsmith, Ironmonger, Embroiderer, or Clothier in a City or Corporation, shall not take an Apprentice (unless his own Son) whose Parent hath not 40*s.* *per Annum* Inheritance, or Freehold; nor in a Market Town, &c. whose Parent hath not 3*l.* *per Annum*, &c. to be certified under the Hands and Seals of three Justices of Peace where the Estate lies, to the Head Officer of the City, Corporation, or Market Town, to be inrolled, &c. But twenty-six *viz.* a Smith, Wheelwright, Ploughwright, Millwright, Carpenter, &c. may take an Apprentice, tho' the Parent hath no Lands.

An Householder using half a Plowland in Tillage, may take Apprentice any, above ten and under eighteen Years old, to serve in Husbandry till the Age of twenty-four, or twenty-one Years at least.

And every Contract, &c. to take an Apprentice contrary to this Act, is void, and he who takes, forfeits for every Apprentice 10*l.*

By the *same Statute*, A Clothmaker, Fuller, Shereman, Weaver, Taylor, or Shoemaker, having three Apprentices, shall keep one Journeyman, and for every other Apprentice, another Journeyman, on Pain of 10*l.*

(B. 55.)
Who may be
bound Ap-
prentices.
By the Pa-
rent, &c.

By the Common Law, after his full Age, a Man may bind himself Apprentice.

So he may be bound by his Parent before.

So, by the Custom of *London*, an Infant, after his Age of fourteen and before twenty-one, may bind himself to be Apprentice by Indenture to a Freeman of *London*.
Vide 21 Ed. 4. 6. a. If he be not married. 2 Rol. 305. Vide Cro. El. 653.

So, by Custom, in other Cities, Boroughs, &c. 9 H. 6. 8. a.

And, by the Custom of *London*, he shall be bound by his Covenant to serve for seven Years, and the Master shall have such Remedy as if he was of full Age: And therefore, the Master shall have Covenant if he depart from his Service. *R. 1 Mod. 271. Semb. Mo. 135. Vide 2 Keb. 687.*

So the Master may give him Correction, or bring him before a Justice of Peace.
Vide 21 Ed. 4. 6. a. 1 Mod. 271.

And it is sufficient to say, that by the Custom he shall have *tale Remedium*, &c. without saying expressly, that he shall have Covenant. *R. 1 Mod. 271.*

So now, by the *St. 5 El. 4.* An Apprentice bound under the Age of 21 Years to serve, shall be obliged as if of full Age.

And Covenant lies for not serving. *Adm. Hutt. 63. R. cont. Cro. Car. 179. Vide infra.*

So Covenant lies by the Custom of *London*, though the Indenture be not inrolled pursued to the Custom. *R. 2 Rol. 305. Pal. 361.*

But by the Common Law, without special Custom, an Infant cannot bind himself to be an Apprentice. *R. 21 Ed. 4. 6. a. D. 2 Cro. 494.*

So, though bound by a Custom, Covenant does not lie upon a collateral Covenant, though usual in an Indenture of Apprenticeship: As, that he shall not use unlawful Games, imbezil the Goods of his Master, &c. *R. per 2 J. Winch. cont. Hutt. 63, 64. Win. Rep. 64.*

So Covenant does not lie for not serving, where an Infant binds himself, since the *St. 5 El. 4.* *R. Cro. Car. 179. Vide supra.*

If the Apprentice marry, it is a Breach of the Covenant, but he shall not be discarded. *2 Ver. 492.*

So by the Custom of *London* if the Indenture be not inrolled within a Year, upon a Petition in *French* to the Mayor and Aldermen, and a *Scire facias* against the Master, if the Omission of Inrollment was not by Default of the Apprentice, (for it shall not be inrolled if the Apprentice does not appear in Person,) the Apprentice shall be discharged, and may serve another Master. *R. Pal. 361. 2 Rol. 305.*

None shall be bound Apprentice, or discharged without Deed. *1 Sal. 68.*

And the Deed ought to be inrolled. *2 Ver. 492, 64.*

Nor

Nor can he be assigned but by Custom. 1 *Sal.* 68.

[An Apprentice is not bound to serve the Executor of the Master. *Baxter v. Burfield*, P. 20 G. 2. *Str.* 1266.]

So an Apprentice to a Waterman, which is a voluntary Society, is not within the Custom of London, and cannot be bound under Age. *R. Mod. Ca.* 69.

By the *St.* 5 *El.* 4. If any, required to serve in Husbandry, or other Art, refuse, on Complaint to a Justice of Peace, or Mayor, &c. he may send for him, and if he find him meet for that Art, may commit him till he will be bound as an Apprentice. Provided, none above twenty-one Years of Age be compelled to be bound.

When a Man shall not use a Trade, unless he was an Apprentice for seven Years, *Vide in Trade.* (D. 5, &c.)

By the *St.* 43 *El.* 2. The Churchwardens and Overseers with the Assent of two Justices of Peace (1 *Qu.*) may raise a Stock to put out poor Children Apprentices, and may bind such Children where they see convenient, till such Man Child be twenty-four Years old, such Woman Child twenty-one Years, or till her Marriage. (B. 56.) By the Parish.

And the Justices of Peace shall compel the Master to receive an Apprentice in Husbandry, though not in Trade. *Per* 3 *J.* *Holt cont. Carth.* 94. *R.* 1 *Sid.* 99. * (*Vide Sal.* 67.)

By the *St.* 3 *Car.* 4. All to whom the Overseers shall bind any Children Apprentices, may receive and keep them as such, and were compellable to receive them. *Per* 3 *J.* 1 *Lev.* 84. 3 *Mod.* 270. *R.* 1 *Sal.* 67. *Sbo.* 77. * [Upon the *St.* 5 *El.* 4.]

By the *St.* 8 & 9 *W.* 3. 30. Any Person to whom a poor Child is appointed to be bound, pursuant to the *St.* 43 *El.* 2. refusing to receive and provide for it, and execute a Counterpart of the Indenture, shall on Conviction before two Justices of Peace by Oath of one Churchwarden, or Overseer, forfeit 10 *l.* to be levied by Distress and Sale, &c. to the Use of the Poor: saving an Appeal to the next Quarter-Sessions.

If the Sessions upon Appeal disallow the Order, because the Master is a Merchant; it will be good: for they are the Judges who are proper. *R. Sal.* 491.

[A poor Child may be bound by the Parish-Officers to a Person residing in another Parish. *Rex v. St. Margarets Lincoln. H.* 13 G. 3. *S. C.* 226.]

[By *Stat.* 18 G. 3. c. 47. Boys shall be bound Apprentices by the Parish, only till twenty-one Years of Age.]

By the *St.* 5 *El.* 4. If the Master misuse, or give Cause of Complaint to the Apprentice, or he do not his Duty to his Master, a Justice of Peace, or Mayor may take Order between them as Equity requires: And if, for want of Conformity in the Master, the Justice of Peace or Mayor cannot compound the Matter, he may bind the Master to the next Quarter-Sessions of the County or Corporation, where, if they think meet, four Justices of Peace, (1 *Qu.*) or Mayor with three of his Brethren, may under Hand and Seal to be inrolled, &c. declare the Apprentice discharged, and the Cause thereof: And if Fault be in the Apprentice, such Justices, or Mayor with his Assistance, may order such Correction as they think meet. (B. 57.) How punished, or discharged.

Though the Statute says (*for want of Conformity in the Master, &c.*) yet the Justices at Quarter Sessions may discharge an Apprentice upon his Complaint, as well as upon Complaint of the Master. *R.* 1 *Sand.* 315. 1 *Sal.* 67.

And the Parties may come originally to the Sessions, without coming first to a Justice of Peace, or Mayor. *Dub.* 1 *Saund.* 316. *Per* 2 *J.* *Holt cont.* 1 *Sal.* 67. *R. Sal.* 68. 491. *Carth.* 198. *cont.*

[Sessions have original Jurisdiction to discharge Apprentices. *Rex v. Davie*, T. 12 G. *Str.* 704. *Rex v. Heafeman*, B. R. H. 101.]

[It must appear on an original Order of Sessions to discharge an Apprentice, that the Master was present, or summoned. *Rex v. Eafman*, P. 8 G. *Str.* 1013. B. R. H. 101.]

[Using him unkindly, and refusing to provide for and entertain him, is not sufficient Ground, there is a Power to oblige the Master to entertain him; and using unkindly is too loose. *Ibid.*]

[Cannot

[Cannot discharge the Master from his Apprentice, for the Apprentice's incurable Sickness; the Master is to provide for him in Sickness and in Health. *Rex v. Hales Owen*, T. 4 G. Str. 90.]

[Apprentice shall not be discharged, only because his Master declares he will not take him again. *Rex v. Davie*, T. 12 G. Str. 704.]

If the Master license a Servant to depart, he cannot afterwards revoke it. *R. Mod. Ca. 70.*

The Justices of Peace may discharge an Apprentice, tho' the Master does not appear, by which his Recognisance is forfeited. *R. Sal. 67, 490.*

If the Apprentice be discharged, the Master shall be discharged of course. *R. Sal. 471.*

If the Justices discharge the Apprentice, the Covenants are discharged of course. *5 Mod. 140.*

If the Justices discharge the Apprenticeship, they may order Restitution of the Money as consequent. *R. P. 13 W. 3. Sal. 67, 68, 490.*

[Justices in Sessions cannot order Money to be returned, on Discharge of Apprentice who had been ill used and not provided for. *Rex v. Vandeleer*, M. 4 G. Str. 69.]

But the Justices cannot discharge an Apprentice to a Trade, not expressed in the Statute. *R. 5 Mod. 140. R. Sal. 471, 490.*

They cannot order an Executor to maintain the Apprentice, where the Master dies. *R. Sbo. 405. 1 Sal. 66.*

They cannot discharge, unless it be by Order under the Seals of the Justices. *R. Carth. 198.*

Yet *quoad* his Maintenance, the Covenant is not discharged by the Death of the Master. *Semb. 1 Sal. 66.*

[The Justices have a concurrent Jurisdiction with the Mayor's Court over Apprentices to Freemen of London, bound and inrolled there but living in another County. *Rex v. Collingbourn*, M. 12 G. Str. 663. 2 *Ld. Raym.* 1410.]

[By St. 20 G. 2. c. 19. On Complaint of a Parish Apprentice, or one with whom not more than 5 *l.* was paid, two Justices may Summon Master and discharge Apprentice, without Fee.]

[So, on Complaint of Master, they may commit Apprentice to hard Labour for a Month, or discharge him.]

[By St. 6 G. 3. c. 25. If Apprentice absents himself from Service before Time expired, he shall serve for so long Time as he has absented himself, or make Satisfaction, or be committed to the House of Correction for three Months: This extends not to Apprentices giving more than 10 *l.* or after seven Years elapsed beyond their Term.]

(B. 58.) Servants.

(B. 58.)
Retainer
Vide Labourers, Ante.
(B. 50, &c.)
—Apprentices,
Ante. (B. 53, &c.)

But the St. 5 *El.* 4. Every Retainer contrary to that Statute is void, And every Servant retained in Husbandry, or any of the thirty Arts there mentioned, shall at his Departure have a Testimonial under the Seal of the Corporation, or of the Constable and two other Householdors of the Parish, declaring the Place of his last Service and lawful Departure; and if retained again, without shewing such Testimonial to the Head Officer of the Parish, he shall be imprisoned till he procure one, and if not procured in 21 Days be whipped as a Vagabond: And any, retaining such Servant without shewing such Testimonial, shall forfeit 5 *l.*

If a Man retain another generally, it shall be intended for a Year. *F. N. B. 168. H. Co. L. 42. b.*

If he retain another for 40 Days, another may retain the same Person; for the first Retainer was not according to the Statute. *F. N. B. 168. F.*

If a Man retain another *juxta formam Statuti*, without Mention of Wages, the Retainer is good, and he shall have the Wages, which are limited by the Justices pursuant to the Statute. *Semb. Bro. Labourer 1.*

So, if a Man retain a Servant, without saying, for what Office, it is good. *Dalt. 185.*

So a Retainer conditionally is good. *Semb. Bro. Labourer 23. Dalt. 185.*

So, a Retainer for two or three Years. *F. N. B. 168. K.*

But a Retainer by an insufficient Man is void. *Semb. Bro. Labourer 25. F. N. B. 168. H.*

A Retainer to serve when required, is good only upon Covenant. *F. N. B. 168. F.*

By a Retainer a Man is in Service by Law, though he does not actually come to his Service. *Awarded, Bro. Labourer 9, 11.*

By the *St. 5 El. 4.* None shall be retained in any of the Sciences of Clothier, Clothweaver, Tucker, Fuller, Clothworker, Shereman, Dyer, Hosier, Taylor, Shoemaker, Tanner, Pewterer, Baker, Brewer, Glover, Cutler, Smith, Farrier, Currier, Sadler, Spurrier, Turner, Capper, Hat or Felt-maker, Bowyer, Fletcher, Arrowhead-maker, Butcher, Cook or Miller, for less Time than a Year. (B. 59.)
For what
Time.

A Retainer generally shall be intended for a Year, for that is pursuant to the Statute. *F. N. B. 168. H. Co. L. 42. b.*

Yet a Man may retain another for two or three Years. *F. N. B. 168. K.*

Or for Life; but such Retainer is out of the Statute. *Bro. Labourer 44.*

By the *St. 5 El. 4.* Justices of Peace, or Mayor, &c. at *Easter* Sessions, or in six Weeks after *Easter*, on Pain of 10*l.* a-piece (unless out of the County or absent by Sickness, &c.) shall appoint the Wages of any Servant whose Wages by any Law in Time past have been rated by the Year, &c. and before the 12th of *July* certify the same with the Causes thereof into *Chancery*, whereupon Proclamations may issue for the Observance, &c. which shall be recorded, &c. and proclaimed and posted on Market-day before *Michaelmas*. But the Justices may certify the Continuance of the last Year's Wages, and then the first Proclamation shall be in Force till a new Proclamation for new Rates be sent down. (B. 60.)
For what
Wages.

And if any Person, after such Proclamation published, shall give more Wages, on Conviction before the said Justices of Peace or Head Officers, he shall forfeit 5*l.* and be imprisoned ten Days, without Bail: And any Person taking more Wages, on Conviction before the said Justices, or two of them, shall be imprisoned twenty-one Days, without Bail.

By the *St. 1 Jac. 6.* The Wages, being rated and ingrossed under Hands and Seals of those who rated them, need not be certified into *Chancery*, but the Sheriff or Mayor, &c. may cause Proclamation of them in as many Places as they think convenient, which every one shall be bound to observe, as if the Proclamation had been sent down after a Certificate, &c.

But the *St. 5 El.* does not extend to Wages of a Coachman, or other Servant, not retained in Husbandry. *R. 2 Jon. 47. R. Sal. 442. Mod. Ca. 204. Vide infra.*

And Justices of Peace cannot imprison for Non-payment of Wages, without an Indictment. *5 Mod. 419.*

Yet for Wages in Husbandry, settled by the Sessions, the Justices have taken upon them, and are allowed to order the Payment. *Sal. 441.*

And if it appears, that they are Wages in Husbandry, tho' not what are settled, it is sufficient, if nothing appears to the contrary. *Per 2 J. Sal. 441. Semb. Sal. 442.*

So it shall be intended Wages in Husbandry, unless the contrary appears. *R. Sal. 484.*

But Justices of Peace have no Authority to make an Order for Servants Wages, except where the Party is retained in Husbandry for a Year, according to the *St. 5 El. 4. R. Cantb. 156.*

[Justices have only Jurisdiction in Husbandry, order ought to shew it was a Matter within their Jurisdiction; Indictment quashed for want of it. *Per Parker C. J. and Pratt J. contra Eyre J. Rex v. Helling. Str. 8. Salk. 441, 484. contra.*]

[Order for Wages in Husbandry good, tho' it does not appear that the Master was present, nor how long the Service was, nor what Wages *per Ann.* *Atkyns's Case, H. 5 G. Fort. 318.*]

[Justice may order Payment of Wages. *Per Cur. Sbergold v. Holloway, M. 8 G. 2. Str. 1002.*]

[But he cannot grant a Warrant to apprehend the Party, only a Summons. *Ibid.*]

[By *St. 20 G. 2. c. 19.* One Justice may determine Disputes between Masters and yearly Servants in Husbandry, and between Masters and any Artificer, Handicraft, Miner, Collier, Keelman, Pitman, Galsman, Potter, and other Labourer, tho' no Rate of Wages is settled, and may order Payment not exceeding 10*l.* to Servant, and 5*l.* to Artificer, and on Non-payment for twenty-one Days, Distress.]

(B. 61.)
Who are
compellable
to serve.

By the *St. 5 El. 4.* Every Person unmarried, or under thirty Years of Age, brought up in any the said thirty Trades, and not allowed under the Hands and Seals of two Justices of Peace, or Mayor and two Aldermen, to have 40*s.* *per Ann.* or 10*l.* Value in Goods, nor being otherwise retained, nor having any Farm or Tillage, on Request by any using the Trade he was brought up in, shall not refuse to serve for the Wages limited, &c. on Pain as for departing from Service. *Vide Post, (B. 63.)*

And Persons, between the Age of Twelve and Sixty, not being an Apprentice or otherwise retained, nor a Gentleman born, nor a Scholar in an University or School, who hath not 40*s.* *per Ann.* nor 10*l.* in Goods, nor a Parent living worth 10*l.* *per Ann.* or 40*l.* in Goods, nor any Farm, on Request, &c. shall be compelled to serve in Husbandry for a Year at the set Wages, on the like Pain.

And two Justices of Peace, or Mayor and two Aldermen may appoint a Woman, between the Age of Twelve and Forty, unmarried, and out of Service, to serve by the Year, Week, or Day, for such Wages and in such Manner as they think meet, and on Refusal, &c. may commit her to Ward, till she shall be bound to serve.

Gentlemen, &c. who cannot be compelled to serve, if they covenant to serve are bound by it, and an Action lies for Breach of Covenant. *F. N. B. 168. E.*

(B. 62.)
Misdemeanor
in Service.

By the *St. 5 El. 4.* If a Servant maliciously assault or make Affray on his Master, Mistress, or Dame, or other who hath the Charge or Oversight of him, on Conviction before two Justices of Peace, or Mayor, &c. by Confession or two Witnesses, he shall suffer Imprisonment for a Year or less, at the Discretion of the said Justices, or Mayor and two others of the Corporation: And, if the Offence require, shall receive such other open Punishment as the Justices at Quarter-Sessions, or Mayor and four of the Corporation shall think meet, so as not to extend to Life or Limb.

If a Servant promise or covenant to serve, and do not serve, he shall suffer as for departing from Service.

(B. 63.)
Departure
from Service.

By the *St. 5 El. 4.* None shall put away a Servant, or depart from Service before the End of his Term, unless for Cause to be allowed by a Justice of Peace, or Mayor, &c. And none shall put away a Servant, or depart from Service at the End of his Term, without a Quarter's Warning before, on Pain that the Master forfeit 40*s.* unless he prove sufficient Cause for such putting away, before Justices of Oyer and Terminer, of Assize, or of the Peace, at Quarter-Sessions, or before Mayor and two Aldermen of a Corporation; and the Servant, if found faulty on Proofs, and Examination before two Justices of Peace, or Mayor and two Aldermen, shall be committed without Bail, till bound to continue in the Service, and then delivered without Fee to the Gaoler. And if a Servant depart into another Shire, the Justices of the Peace of the County or Corporation may grant a *Capias* to the Sheriff, or Head Officer of the Place where such Servant is, returnable before them when they please, so

as they commit the Servant come by such Process, till he find Surety honestly to serve, &c.

[The Discharge of a Servant by a Justice is an Act of Jurisdiction, and should be by Order in Writing. *Rex v. Hanbury*, T. 26 & 27 G. 2. B. S. C. No. 115.]

[There must be a Hearing, an Ordering, (in writing) and a reasonable Cause. *Ibid.*]

[A Servant's marrying is no reasonable Cause for Discharge; for it is not a Misdemeanor, and nothing else is a Cause. *Ibid.*]

None shall depart, and be retained again, without a Testimonial, &c. *Vide Retainer, Ante* (B. 58.)

If a Servant depart from his Service, he shall lose his whole Wages. *Bro. Labourer* 40.

But if he depart with the Consent of his Master, he shall have his Wages for the Time he served. *Bro. Labourer* 38.

Before the *St. 5 El.* A Denial of Wages, Meat, or Drink was Cause for a Servant to depart from Service. *F. N. B.* 168. L.

So, a Battery. *F. N. B.* 168. L. 2.

Or, Licence of the Master. *F. N. B.* 168. L.

But Marriage was not, and the Husband could not take the Wife out of Service. *Bro. Labourer* 18. *F. N. B.* 168. N.

If a Servant be drawn away, the Master may re-apprehend him, and keep him in Spite of him. *F. N. B.* 168. P.

(B. 64.) Poor.

By the *St. 43 El. 2.* The Churchwardens, and four, three or two substantial (B. 64.)
Householders to be nominated in *Easter Week*, or a Month after, under the Hands and Seals of two or more Justices of Peace (1 *Quorum*) in or near the Parish, shall be called Overseers of the Poor. Overseers of the Poor. Who are.

And if no such Nomination, every Justice in the Division, and every Mayor, Alderman, and Head Officer shall forfeit 5*l.* for the Relief of the Poor, to be levied by Warrant from the Quarter-Sessions.

[No parol Evidence shall be admitted of their being Overseers, the Appointment under the Hands and Seals of two Justices must be produced. *Rex v. Arnold*, T. 4 G. *Str.* 101.]

[They must be appointed by the Word Overseers. *Rex v. St. George's*, T. 9 Geo. *Fort.* 320.]

[Justices may and must appoint Overseers in an *extra parochial* Place. *Rex v. Rufford*, H. 8 G. *Fort.* 321. *Str.* 512.]

[It must appear on the Order appointing Overseer, that he is a substantial Householder. *Rex v. Sberingbrook*, P. 11 G. 2 *Ld. Raym.* 1394.]

[Overseers may be appointed at any Time. *Rex v. Rufford*, T. 7 G. *Rex v. Utoxeter*, T. 5 G. 2. *Rex v. Sparrow*, H. 13 G. 2. *Str.* 1123.]

[In the Appointment they must be stiled *substantial Housekeepers there*, or in the said Parish, and that in the Body of the Appointment. *Overseers of Weobly's Cafe*, M. 20 G. 2. *Str.* 1261.]

If there is an Order appointing one Overseer, B. R. will not quash it, for they may appoint one at a Time, and may have appointed another, and the Court will not presume the contrary. *Rex v. Bestland*, H. 19 G. 2. *Wilf.* 128.]

[Whether the Offices of Justice of Peace and Overseer are compatible, and whether Overseer can appoint a Deputy, Q. *Rex v. Gayer*, H. 30 G. 2. 1 B. M. 245.]

[Justices cannot appoint more than four Overseers, if they do, one may be left out of the Order by Consent, otherwise the Order must be quashed. *Rex v. Loxdale*, H. 31 G. 2. 1 B. M. 445.]

[An Order made at *Easter* 1766, appointing Overseers for this present Year 1766, is good; for it shall be understood from *Easter* 1766, to *Easter* 1767. *Rex v. Helling*, P. 6 G. 3. 3 B. M. 1904.]

But a Citizen and Inhabitant of *London*, who resides for Part of the Year in the Country, ought not to be chosen there. *Carth.* 161.

By

(B. 65.)
Their Authority,
In Relief of
the Poor.

By the *St. 43 El. 2.* The Overseers, or the greater Part, shall take Order, with Consent of two such Justices of Peace for setting to work the Children of all Parents they think unable to maintain them, and all Persons having no Means or Trade to get their Living by.

And to raise weekly, or otherwise, by Taxation of Inhabitant, Parson, Vicar, &c. Occupier of Lands, Houses, Tithes, Coal-mines, &c. a Stock for setting the Poor to work, Relief of the Impotent, and putting out Apprentices, &c.

And by Warrant of two such Justices to the present or subsequent Overseers, to levy such Tax by Distress and Sale of the Offender's Goods, and in Defect of Distress, such two Justices may commit to the County Gaol without Bail, till Payment.

And shall meet once a Month, in the Church after Afternoon Service, (unless by Excuse allowed by two Justices,) to take Course in the Premises.

And in four Days after the Year and others nominated, shall account for all Monies received or assessed, and their Stock, and deliver what is in Hand to the new Overseers, on Pain of 20s. if negligent in Office, or the Orders aforesaid made with Assent of two Justices.

And the Monies or Stock behind on such Account may be levied by Distress and Sale, &c. And two Justices may commit the Churchwarden or Overseer refusing to account, till he account and pay what is due on such Account.

Provided, if any be aggrieved, &c. the Justices of Peace at the Quarter-Sessions may make a final Order.

And the Head Officers of a Corporation, being Justices of Peace, shall have in and out of Sessions the Authority of Justices in the County.

[If there are four Justices in a Liberty, and they have been used to determine Appeals concerning the Poor, they may do it. *Rex v. Coningsby, H. 18 G. 2. Str. 1222.*]

[Quarter-Sessions have not original Jurisdiction over Overseers Accounts, and therefore on an Order of Sessions relating to them, it must appear that they have been allowed by two Justices, *Quorum unus. Rex v. Bartlett, T. 7 G. 2. Str. 983.*]

[This continues the same since 17 G. 2. c. 38. and therefore Sessions cannot make an original Order on old Overseers to pay to the new the Balance of their Accounts, settled and balanced by the said Order of Sessions. *Rex v. Whitear, M. 3 G. 3. 3 B. M. 1365.*]

[The Vestry cannot authorize old Overseers to retain Balance of their Accounts. *Rex v. Justices of Somersetshire, M. 8 G. 2. Str. 992.*]

[Beasts of the Plough may be distrained, tho' there is other sufficient Distress. *Hutchins v. Chambers, P. 31 G. 2. 1 B. M. 579.*]

If sufficient Distress might be taken at the first, but is not, the Officer may distrain again under the same Warrant, provided it be for the same Sum due; but a Man who has an intire Duty shall not split the intire Sum, and distrain for one Part at one Time, and another at another. *Ibid.*]

[If a Man rated dies before Payment, and a Demand is made on his Representative, and he is summoned, Distress may be granted. *Semb.* But certainly not otherwise. *Stevens v. Evans, P. 1 G. 3. 2 B. M. 1152.*]

[The Expences of Distress and Sale may be retained, tho' 43 El. does not mention it; the Statute giving a Right to distrain and sell, all Incidents necessary to obtain that Right are included. *Barnes 459.* (Q. Does this extend to all Cases where Penalties are to be levied for the Poor, and no Provision made for the Costs?)]

If an Overseer be in Arrear upon an Account, he shall not be committed but upon Default of a Distress. *R. Sal. 533.*

Tho' it be by the Quarter-Sessions. *Sal. 533.*

If he be in Arrear upon an Account, the Justices may order Payment to the Successor. *R. Sal. 484.*

But a *Mandamus* to account to the Successor will be quashed; for he ought to account to the Justices. *R. Sal. 525.*

So, a *Mandamus* for a Rate for Reimbursement of the Predecessor. *R. Sal.*

531. If an Overseer gives a general Account, he cannot be committed for not giving a particular Account. *R. Sbo. 395.*

[If Justices refuse to swear Overseer to his Accounts, *Mandamus* lies of course, and they may return the special Cause. *Rex v. Justices of Middlesex, Hil. 19 G. 2. Will. 125.*]

[Q. Whether 17 G. 2. c. 38. has repealed 43 El. c. 2. as to Overseers Accounts? And Q. also, what Account the Justices are obliged to let them swear to, by 17 G. 2. The Words of it are, "A true, just, and perfect Account of all Sums received, or rated and assessed, and not received; and of all Goods in their Hands, or in the Hands of any of the Poor, in order to be wrought; and of all Monies paid by them, and of all other Things concerning their said Office." Are the Justices obliged to swear them to any Account, however imperfect? If they are, may they not afterwards, on Complaint, commit them for not having made and yielded up such Account, verified as aforesaid.]

By the St. 43 El. 2. The Churchwardens and Overseers, with Agreement of the Lord of the Manor and Order of Quarter-Sessions, may build Houses on the Waste, for the impotent Poor and no other, to dwell in.

Overseers ought to relieve impotent Persons only. 2 Bul. 348.

By the St. 3 Car. 4. Churchwardens and Overseers with Assent of two Justices of Peace, (1 Quorum) or of one, if no more in that Division, may set up and use any Trade, &c. for setting on Work, and Relief of the Poor of that Parish.

By the St. 3 & 4 W. & M. 11. A Register shall be kept, at the Charge of the Parish, of all relieved, and when first, and for what Cause, which at Easter, or oftner, shall be examined, &c. And none relieved unless registred, or by Order of Quarter Sessions, or under the Hand of a Justice of Peace, or in Case of Small Pox, Plague, or Pestilential Diseases. Or, by St. 9 Geo. 7. upon sudden Occasions.

So, by the St. 8 & 9 W. 3. 30. A poor Person his Wife and Children in the same House, (unless there to nurse an impotent Parent,) shall wear a P. with the first Letter of the Parish in Blue or Red Cloth on the Right Shoulder of the Upper Garment; and for Neglect the Justices of Peace may abridge or take away the Relief, or send to the House of Correction for twenty-one Days; and no other shall be relieved on Pain of 20 s. to be levied by the Justices, on Conviction by one Witness, by Distress and Sale, a Moiety to the Poor, a Moiety to the Informer.

By the St. 9 Geo. 7. Justices shall not order Relief, till Oath of a reasonable Cause for it, and of Refusal by the Vestry, &c. And till hearing Overseers, or Summons of them, and their Default to appear.

[By St. 17 G. 2. c. 3. The Overseers shall give Notice in Church of the Rate, next Sunday after allowed by the Justices, or it is void.]

[§. 2. The Rates may be inspected by any Inhabitant, paying 1 s. and a Copy shall be given for 6 d. every twenty-four Names, on Penalty of 20 l.]

[By Stat. 17 G. 2. c. 38. In fourteen Days after Appointment of Overseers, the Churchwardens and former Overseers shall deliver them an Account in Writing, in a Book signed by them of all Monies received by them, or rated and not received, and of all Stock in Hand, and all Monies paid, and all other Things concerning their Office, and deliver them all Money and Stock: the Account to be sworn to before a Justice, and attested at the Foot of it, and kept for Inspection for 6 d. and Copies given at 6 d. for three hundred Words.]

[By §. 2. Officer not accounting and delivering Money, &c. to be committed by two Justices till he does.]

[By §. 3. Overseer removing, shall on like Penalty account and deliver; dying, his Executor shall account and pay in forty Days; and on Death, Removal or Insolvency, two Justices shall appoint another.]

[By §. 4. Persons aggrieved may appeal to Quarter-Sessions on reasonable Notice, who are to determine finally; if not reasonable Notice, to adjourn to next Quarter-Sessions, and then determine finally; and may give Costs.]

[By §. 5. In Corporations where there are not four Justices, the Appeal to be to County Quarter-Sessions.]

[By §. 6. Quarter-Sessions shall only amend Rate, so as to give Relief; if necessary to quash the whole Rate, they shall order a new one to be made by Churchwardens and Overseers.]

[By §. 7. Rate may be raised by Distress, not only in the Parish, but in any other in the County; and for Want of it there, in any other County, by Warrant of Justice of that other County; Appeal to be to the Quarter-Sessions where the Parish lies.]

[By §§. 8, 9, 10. Distress not to be unlawful for Want of Form in Appointment, Rate or Warrant, or Party distraining deemed a Trespasser *ab initio* for subsequent Irregularity; and Party suing shall recover special Damages only and Costs, but shall not recover if Tender made before Action brought.]

[By §. 11. If any Person neglects to pay, the succeeding Overseers shall levy such Arrears, and reimburse their Predecessors what they have expended and are allowed in their Accounts.]

[By §. 12. Persons removing from, or coming into a Parish, shall pay in proportion to the Time, to be settled by two Justices.]

[By §. 13. Copies of the Rates shall be entered in a Book, in fourteen Days after Appeals determined, and signed by Churchwardens and Overseers: and all Persons rateable may inspect them.]

[By §. 14. Officer offending shall forfeit from 10 s. to 5 l. for the Use of the Poor.]

[By §. 15. Where there is no Churchwarden, the Overseers shall do all Acts, and be liable to all Penalties, by Virtue of this and all former Statutes concerning the Poor.]

Generally the Justices ought to determine who are impotent. *1 Vent. 69.*

An Order for Relief shall not be quash'd, tho' the Party be able to work. *Ibid.*

Tho the Party be a Bastard; for such a one may be relieved as impotent. *1 Sal. 123.*

Yet the Order for Relief must say, that the Party is poor and impotent, otherwise it will be quash'd. *R. 5 Mod. 397.*

[In an Order for Relief, it must appear that the Party is poor and *impotent*; the Word *Impotent*, indispensable, three Orders quashed for Want of it. *Rex v. Highworth, Rex v. Stoke-Ursey, Rex v. Tipper, Str. 10.*]

And Justices cannot order the finding of an House for the Poor. *5 Mod. 397.*

(B. 66.)
In charging
the Parish.

Every Parish ought to be charged for the Relief of their own Poor.

So, a Parish in Reputation, which in the 43 *El.* and ever since had Churchwardens, &c. *Per 2 J. Houghton cont. 2 Rol. 160. R. Cro. Car. 93. 395. Jon. 356.*

So, by the *St. 13 & 14 Car. 2. 12. S. 21.* it is enacted, that where in *Lancashire, &c.* and many other Counties for the Largeness of the Parishes, the Inhabitants cannot reap the Benefit of the *St. 43 El. 2.* the Poor in every Township or Village in the said Counties shall be maintained, kept, &c. in the Township or Village, where he inhabits or was last settled: And there shall be yearly chosen two or more Overseers of such Township, &c. who shall execute all Powers for Relief of the Poor, &c. And the Justices shall have the same Powers to do every Act in such Township or Village, &c. as they might do in any Parish, &c. by the *St. 43 El. 2.*

[In order to appoint separate Overseers for Townships in one Parish, it must appear, that the Parish is so large, that the Inhabitants cannot reap the Benefit of 43 *Eliz. Peart v. Westgarth, H. 5 G. 3. 3 B. M. 1610.*]

[If a Parish has long had Overseers for the *Whole*, it shews they can reap the Benefit of 43 *Eliz.* And future Acquiescence under an Order appointing separate Overseers does not vary the Right. *Ibid.*]

[Justices in Sessions have no Power to make such Division, except on Appeal. *Ibid.*]

And

And extraparochial Places, having several Houses, that may have the Denomination of a Vill, shall be within the Benefit of that Statute. *R. 11 Ann. Sal. 486. in Marg.*

So an extraparochial Place may be charged in Aid of another Parish unable, &c. *Per Holt, Sal. 486. Carth. 515.*

So a *Mandamus* lies to Justices of Peace to appoint Overseers in an extraparochial Place to provide for the Poor there. *R. 2 Mod. Ca. 39.*

But an extraparochial Place, that has no Appearance of a Parish or Vill, will not be within the Provision of these Statutes. *R. Sal. 486.*

[*Mandamus* will not lie to appoint Overseers to an extraparochial Place, unless it be a Township or Vill; which must consist of ten Families, or have a Constable, or at the least have the Reputation of a Vill. *Rex v. Showler. T. 3 G. 3. 3 B. M. 1391.*]

So, generally, all Vill within a Parish may be charged for the Relief of the Poor of the whole Parish. *R. 1 Sid. 292.*

Tho' there was an antient Chapel there, and some Rates there; if it has not the Reputation of a Parish. *R. 4 Mod. 157.*

Tho' the Parish lies in several Counties, if every Part has not distinct Officers and Rates, and the Reputation of a distinct Parish. *R. Ray. 477.*

So the whole Parish ought to be charged together, and not a single Part or Vill. *R. Jon. 356.*

The Rate may be levied before the Quarter expires. *Semb. Mod. Ca. 214.*

[Justices must sign the Rate, whether fair or not; that is proper for the Jurisdiction of the Sessions; and B. R. will not meddle with it. *Rex v. Justic. de Dorchester, M. 7 G. Str. 393.*]

If the Justice of Peace refuse to allow the Rates, B. R. will send an Attachment. *1 Sid. 377.*

There shall be an Appeal upon an Account before two Justices. *Sal. 533.*

[There may be an Appeal from a Rate to the Sessions of a Borough. *Rex v. Taunton, P. 12 G. Fort. 325.*]

Upon an Appeal by particular Persons, the Sessions may quash the whole Rate, and order a new one by themselves, or direct the Officers to make it. *R. Sal. 483, 524.*

[The Sessions may quash a Rate without giving their Reasons. *R. v. Justices of Cornwall, T. 7 G. 3. 4 B. M. 2602.*]

But they cannot order a standing Rate. *R. Sal. 526.*

Every Inhabitant shall be rated according to his visible Estate, Real or Personal, in the same Parish only. *Per all the J. 2 Bul. 354.*

Things Real, which render an annual Revenue, shall be rated as well as Land: As, Shops, and Sheds.

Quit-Rents. *Semb. Carth. 14.*

Salt Pits, and the Toll of a Market.

Tithes; for the Clergy are subject to all Charges imposed by Parliament. *R. 5 Car. 1. Per all the J. in England, ut dicitur per Hale. 1 Vent. 273.*

[A Vicar is chargeable. *Rex v. Turner, H. 4 G. Str. 77.*]

[Sessions may moderate, but cannot discharge. *Ibid.*]

[In a private Statute, where only Lands and Tenements are made chargeable to the Poor, Tithes are rateable; for they are a Tenement. *Rex v. Skingle, T. 4 G. Strange 100.*]

[The Parson or his Tenant, though they take a Composition, are chargeable as Occupiers of the Tithes; not the Tenant of the Land, though he has a Retainer of Tithe. *Rex v. Lambeth, T. 8 G. Fort. 318. Str. 525.*]

Lands, which belong to an Hospital. *R. Sal. 527.*

[An Hospital is not rateable, for there is no Occupier, the Lessees are mere nominal Trustees; the Servants only attend the Charity, and are not like the Officers in *Chelsea*, &c. who have Apartments which are considered as their Houses; the Patients cannot be considered as Occupiers for this Purpose. *Rex v. Saint Luke's Hospital, M. 1 G. 3. 2 B. M. 1053. Rex v. Saint Bartholomew the less, T. 9 G. 3. 4 B. M. 2435.*]

[Quit-

[Quit-rents and casual Profits of a Manor are not rateable. *Rex v. Vandewall*, P. 33 G. 2. 2 B. M. 991.]

[The Lessees of Lead-mines paying no Rent but only a Part of the Ore raised, are not rateable. But Q. if they would be rateable if they paid a Rent? *Lead-Company v. Richardson*, M. 3. G. 3. 3 B. M. 1341.]

[If Justices expressly state that Beech is Timber by the Custom, altho' they afterwards state many immaterial Things, and insufficient Reasons, and conclude, "And therefore we are of Opinion that Beech is Timber, &c. and therefore" not rateable," the Court will not quash the Order. *Rex v. Minchin Hampton*, H. 2 G. 3. 3 B. M. 1308.]

[A Man is not chargeable as Occupier of a Dissenting Meeting-House. *Rex v. Reed*, H. 13 G. Fort. 306. Str. 745.]

[An Officer of the Salt Office is not rateable in respect of his Salary. *Rex v. Shalfleet, Sherrington's Case*. H. 7 G. 3. 4 B. M. 2011.]

[A Tradesman is not rateable for his Stock in Trade. *Semb. Rex v. Ringwood*, T. 15 G. 3. 4 B. M. 2295.]

But the Occupier pays the Tax to the Poor, not the Lessor. *Per all the J. in England*. 2 Bul. 354.

Tho' the Lessor covenants to pay Taxes upon the Land; for this lies upon the Occupier. R. 2 Mod. Ca. 314.

And if an Occupier of Land in B. has no Goods there, he may be distrained where he inhabits, in another Parish. *Per Holt, at Hertford* 1698.

If it be in the same County. *Adm. Mod. Ca.* 214, 215.

So, if rated in A. and he afterwards removes to B. *Per Holt Mod. Ca.* 214, 215.

* [This was for Repairs of a Church.]

The Lessee of a Stall in a Market shall not be charged. * 2 Rol. 238. 2 Rol. 289. l. 35.

Several Families shall be rated severally. R. Sal. 532. Mod. Ca. 214.

The Rate shall be only for a Month. Sal. 532. Mod. Ca. 214.

[By Stat. 17 G. 2. c. 37. Waste Lands improved, and drained Lands shall pay to the Parish which lies nearest to them; and Quarter-Sessions may determine Disputes.]

[B. R. will not set aside a Rate confirmed by Sessions unless manifestly unequal. *Rex v. Brograve*, M. 10 G. 3. 4 B. M. 2491.]

[It is proper that Lands should be higher rated than Houses. *D. per Ld. Mansfield. Ibid.* N. B. In this Case the Proportion had been agreed to by all the Parish and by Defendant himself.]

(B. 67.)
In charging the Hundred, or County.

By the St. 43 El. 2. If the Parish be not able, &c. such two Justices of Peace may rate any of another Parish in the Hundred as they think fit: And if the Hundred is not able, the Justices at the Quarter-Sessions shall rate any of another Parish in the County to pay such Sum, &c. as they think fit.

Two Parishes cannot be rated together for Relief of the Poor of both, but if one be insufficient, the other may be charged in Aid of it. *Per Holt, M. 3 W. & M. Vide Sal.* 480, 481.

The Charge may be upon one or more Inhabitants in a Parish, for aiding of the other Parish. 2 Bul. 353. R. 1 Vent. 350. Sal. 481.

If a Parish be taxed in Aid of another, the Tax may be enlarged or diminished, when the Poor in the other Parish encreases or decreases. *Per Jon.* 2 Bul. 353.

So a Tax may be assessed in Gros upon a Parish to the Relief of another. Sal. 480, 481.

Or, any in such Parish, without assessing the whole Parish. R. 1 Vent. 350. Sal. 481.

Or, an extraparochial Place. *Per Holt Cartb.* 515. Sal. 486.

[Justices may order one Parish to pay a gross Sum to another, but they themselves must make the Rate on all or on particular Persons, and not delegate their Power of assessing to the Churchwardens and Overseers. *St. Peter and Paul in Marlbro's Case*, T. 12 G. 2. Str. 1114.]

[The Order must be to raise a Sum certain, not so much in the Pound. *Rex v. Telfoambe, T. 6 G. Str. 314.*]

[An Order to contribute so long as the said Justices shall think fit, is bad; they are to determine the Quantum not the Duration. *Rex v. St. Mary in Marlbro', P. 12 G. Str. 700.*]

But the Justices at the Sessions cannot make a Parish contributory to another, unless it be first ordered by two Justices. *R. 5 Mod. 397.*

[Sessions have Power to order one Parish to relieve another only when out of the Hundred, and two Justices only when in the same Hundred. *Inhabitants of Freeport, T. 4 G. Fort. 303.*]

[Justices at Sessions can charge Parishes out of the Hundred to contribute to the Poor of a Parish in that Hundred, although two Justices have not adjudged, that no Parish within the Hundred is able. *Rex v. Percival, T. 3 G. Str. 56.*]

[The Word "Hundred" is not essential in an Order of two Justices; if the Division is called by any other Name equivalent, it is equally within the Intention of the Act: thus, *that A. and B. both lie in the same Liberty of the Soke*, is good, if such Division is substantially a Hundred. *Rex v. Milland, P. 31 G. 2. 1 B. M. 576.*]

[The Order must shew, that the Place taxed in Aid is out of the Parish. *Inhabitants of Borough Fenn, T. 12 G. Fort. 326.*]

By the *St. 43 El. 2.* The Father, Grandfather, Mother, Grand-mother, and Children of a poor impotent Person, being of Ability, shall at their own Charge ^(B. 68.) maintain such Person, according to the Rate, that the Justices of Peace of the County, where the sufficient Person dwells, at the Quarter-Sessions shall assess, on Pain of 20 s. per Month, to be levied by two Justices of Peace, or Mayor, &c. by Distress and Sale, &c. ^{In charging the Relations;}

An Order upon a Relation for Relief, shall be made at the Quarter Sessions of the County where the Party charged inhabits, otherwise it is void. *R. 2 Bul. 345.*

And it is not good, unless it appears that the Party relieved is not able to work. *Semb. 2 Bul. 344.*

The putative Grandfather of a Bastard is not chargeable within this Statute; for the Law knows no such Person. *Semb. 2 Bul. 344. R. 1 Vent. 310.*

Nor the Wife of the putative Father; for a Bastard is not within the Statute. *Vide 2 Bul. 346. Per 2 J. 2 Bul. 350.*

If a Man marry the Grandmother of an impotent Person, with whom he has a Substance, he is chargeable in respect of the Substance which he had with his Wife, and shall be said to be Grandfather. *2 Bul. 345. R. 2 Bul. 346.*

So, if Land descend to the Wife, after Marriage. *2 Bul. 347.*

Otherwise, if he had not any Substance with her in Marriage. *Per Cro. 2 Bul. 345. Per 2 J. 2 Bul. 346.*

Though he afterwards becomes able by the Industry of his Wife. *Per Cro. Whitl. cont. 2 Bul. 347.*

Nor shall he be charged after the Death of his Wife, tho' he had a Substance with her. *Per Cro. 2 Bul. 347. cont. Comb. 405.*

[A Man is not bound to provide for his Wife's Mother, though he had Substance with her in Marriage, either within the Words or Intent of Statute, which provides only for natural Parents. *R. per Cur. and 2 Bulst. 345. supra.* denied to be Law. *Rex v. Munden, T. 5 G. Str. 190. Fort. 303.*]

[The Father-in-law is not obliged to maintain his Daughter-in-law. *Rex v. Benoyer, M. 13 G. - Ld. Raym. 1454. Rex v. Dempson, M. 7 G. 2. Str. 955.*]

By the *St. 5 Geo. 8.* Churchwardens or Overseers, by Order of two Justices, may take Goods or Rents of Lands, &c. of the Husband, Father, or Mother, who leaves his Wife or Children a Charge to the Parish: And the Order being confirmed by the Quarter Sessions, the Justices there may direct a Sale of the Goods; and the Overseers shall be accountable to the Quarter Sessions.

A Father charged is not to be committed, till an Order made and Refusal by him to pay the 20 s. *per Menssem*, and a Default of Distress. *Vide 2 Bul. 344.*

The Quarter Sessions may order a Father to pay 2 s. a Week, till other Order. *R. Sal. 534.*

If there be a Bond to save a Town harmless from A. his Wife and Children, it extends to Children born afterwards, or before. *R. Skin. 556.*

And to the Children of the Son during his Life, not afterwards. *Skin. 557.*

(B. 69.)
Relief of poor
Prisoners,
maimed Sol-
diers, and
Mariners,
&c.

By the *St. 43 El. 2.* Justices of Peace at *Easter* Sessions shall rate every Parish in a County or Corporation, at a weekly Sum not above 6 d. nor less than a s. in any Parish, nor above 2 d. for every Parish, one with another through the County, to be assessed by Agreement among the Parishioners, or in Default by the Churchwardens and Petty Constables of the Parish, or in their Default by Order of a Justice of Peace in or near the Parish, and to be levied by the Churchwarden or Constable, or in their Default by a Justice of Peace by Distress and Sale of the Offender's Goods, and for want of Distress, a Justice of Peace may commit without Bail, till Payment. And the Justice of Peace at such Quarter Sessions shall set down what Sum shall be sent quarterly to the Prisoners of the King's Bench, and Marshalsea, and each Hospital, and Alms-house in the County, so as 20 s. yearly be sent to each of the said Prisons out of each County; and the Residue employed to the Relief of Hospitals in the County; and of Sufferers by Fire, Water, and other Casualties, and such other charitable Purposes as the Justices at Quarter Sessions shall think meet: Which Sums, rateably assessed on every Parish, the Churchwardens shall collect and pay to the High Constable quarterly, ten Days before every Quarter ends, on Pain of 10 s. and the High Constable at the Quarter Sessions, to the Treasurer of the County, on Pain of 20 s. to be levied with the said Sums for the said charitable Purposes by the Treasurer, by Distress and Sale; and the Treasurer shall pay the Sum for the Prisons to the Chief Justice of *England*, or, if none, to the next ancient Judge, and the Knight Marshal, equally to be divided, taking their Acquittance for the same.

By the *St. 43 El. 3.* Justices of Peace at *Easter* Sessions in a County or Corporation, shall charge on every Parish a weekly Sum for Relief of Soldiers and Mariners, sick and hurt in her Majesty's Service, not above 10 d. nor less than 2 d. in any Parish, nor above 6 d. for every Parish, one with another, where there be above fifty Parishes in a County, to be assessed and levied, *ut supra* for Prisons, &c. And to be collected and paid by the Churchwarden and Petty Constable of the Parish to the High Constable, ten Days before every Quarter Sessions, on Pain of 20 s. and by the High Constable at the Quarter Sessions to the Treasurer of the County on Pain of 40 s. to be levied *ut supra* for Augmentation of the Stock.

And such Soldier or Mariner shall go to the Treasurer of the County whence prest, or if not prest, of the County where born, or last dwelt for three Years, at Election, or if not able to travel, of the County where he lands; and bring a Certificate under the Hand and Seal of the General of the Camp, or Governor of the Town, or his Marshal or Deputy, and of the Captain under whom he served, or his Lieutenant, or of the Admiral or other General at Sea, or Captain of the Ship; which Certificate shall be allowed by the General Muster Master in this Realm, or Treasurer and Comptroller of the Navy: On which Certificate such Treasurer shall allow him a convenient Subsistence till the Quarter Sessions, when the Justices of Peace may grant him an annual Pension for his Life, if no Officer not above 10 l. if an Officer under a Lieutenant not above 15 l. if a Lieutenant not above 20 l. to be paid quarterly by any Treasurer of a County; but the Justices of Peace may alter or revoke such Pension.

And till such Soldier or Mariner can arrive to a County where they may have such Pension, or to the Muster Master General, who is to allow such Certificate, the Treasurer of the County where he lands, and so of every County, before such Allowance, may give them Relief for their Journey through that County, and a Testimonial to pass to the Place of Pension.

And the Residue of the Stock shall, at the Discretion of the Justices at the Quarter Sessions, be bestowed for the charitable Designs of the Statutes for Relief of the Poor and Punishment of Rogues, or reserved for the future Relief of maimed Soldiers and Mariners.

By the *St. 14 El. 5.* Justices of Peace at the Quarter Sessions in a County or Corporation, may rate every Parish not above 6*d.* or 8*d.* *per Week* for Relief of the Common Gaols, which the Churchwardens shall levy every *Sunday*, and pay once a Quarter to the High Constable, who shall pay at the Quarter Sessions to such as the Justices of Peace shall direct, who shall weekly distribute the same to the Relief of the Prisoners, on Pain of 5*l.* for Default in any Officer, a Moiety to the Queen, a Moiety to the Prisoners. *

* [*Vide the St. 19 Car. 2.4.*]

By the *St. 5 Ann. 32.* If the Gaol or *Marshalsea* Money be not sufficient, the Justices at Quarter Sessions may assess what they think reasonable for the Constable's Time and Expence in passing Vagrants.

If the Money for the Prisoners in the *Marshalsea*, and maimed Soldiers, is not duly paid, *B. R.* upon Motion will grant an Attachment against the Sheriff of the County, and take any of the County in *Witbernan* for it, if the Sheriff does not pay for it. *R. Skin. 227.*

But Justices of Peace cannot limit the Stock of the County to the Charge of the Prosecution of a Barretor. *R. B. R. 2 Ann between The Queen and Inhabitants of Hertford. Sal. 605.*

They cannot, by the same Order, direct the Payment to Gaols, upon the *St. 14 El.* and the *St. 19 Car. 2.* *R. Sal. 487.*

By the *St. 43 El. 2 & 3.* Justices of Peace at *Easter* Sessions shall elect, of themselves or others, two Treasurers, who shall continue one Year and then give up their Accounts to their Successors. (B. 70.)
Treasurer of a County.

And if the Treasurer refuse the Office, or to relieve maimed Soldiers or Mariners, &c. or neglect his Duty, or refuse to account, as the Justices direct, the Justices of Peace, or in their Default the Judges of Assize, may fine him, to be levied by Distress and Sale, &c. and may appoint any two Justices of Peace to prosecute him.

Mayor and Justices of a Corporation may appoint one to receive and pay Money within the Corporation, who shall do and be subject to the Penalties of an High Constable.

By the *St. 5 Ann. 32.* Treasurers shall obey Orders of Quarter Sessions for paying Sums to pass Vagrants, if they have Money in Hand to pay.

[Money to pass Vagrants should be raised quarterly, but a Presentment of the Grand Jury is not necessary. *Rex v. Justices of Middlesex, H. 9 G. 2. Str. 1028.*]

[By 12 *G. 2. c. 29. ff. 1.* Quarter Sessions may make one general County-rate; *ff. 2.* which shall be paid by the Overseers out of the Poor's Rates to the High-constable; *ff. 3.* and if no Poor's Rate, to be levied by the Petty Constable; *ff. 4.* except in the northern Counties; *ff. 5.* except Persons not before liable; *ff. 6.* the Money to be paid to the Treasurer, and by him as the Sessions direct.]

[By 13 *G. 2. c. 18. ff. 6.* Justices of Liberties may act for their Liberties according to 12 *G. 2. c. 29.*]

[By *Stat. 17 G. 2. c. 5.* The Treasurer shall repay the High Constable the Expence of passing Vagrants.]

[By *Stat. 25 G. 2. c. 36.* On Conviction for Felony, the Court may order the Prosecutor's Expences to be paid by the Treasurer.]

[By *Stat. 27 G. 2. c. 3.* The Expences of conveying Person committed to Gaol or House of Correction, by Justices Warrant, shall be settled by a Justice, and paid by the Treasurer: In *Middlesex* by the Overseers.]

[The Charges of Attendance of a poor Person bound to give Evidence on Felony may be settled by Court, and shall be paid by Treasurer; except in *Middlesex.*]

By

(B. 71.)
Settlement of
Poor.
By the Com-
mon Law.

By the Common Law, the Place of Birth, or last Habitation, are proper for the Settlement of poor Persons. *Per J. of Assise. 2 Bul. 350, 352.*

And therefore, a Bastard, who has gained a Settlement, shall be sent thither, and not to the Place of his Birth. *R. 2 Bul. 350.*

A Child born in an House of Correction shall be sent to the Place, where the Mother had a Settlement. *2 Bul. 358.*

The Son or Daughter of a Vagrant, who has no Settlement, shall be sent to the Place of the Birth, not being seven Years of Age; for it cannot gain a Settlement where the Parents die. *2 Bul. 351. Ray. 477.*

A poor Child shall be sent to the Place of Settlement, and not of Birth. *Ray 477.*

So, an Idiot. *Sal. 427.*

And if one be sent as a Vagrant, he may afterwards be sent to the Place of Settlement. *R. Sal. 526.*

The Settlement of the Parent settles his Child. *R. Sal. 528, 9.*

Though under seven Years. *Sal. 527.*

An Order for the Settlement of a Child after the Age of seven with its Parent, is not good, unless it shews, that it had no other Settlement; for it might have gained a new Settlement. *R. Sal. 470.*

And if a Child be sent with the Mother, till the Age of seven Years, it shall be only for Nurture, and it shall be maintained at the Charge of the Parish where it is settled. *Sal. 482, 528.*

But an Order by two Justices to the Overseers of B. for the Relief of a poor Person, does not determine, but presumes his Settlement there. *R. 1 Sal. 123.*

So a Bastard shall be sent to the Place of his Birth, if he has not gained another Settlement, and not with the Mother. *R. Sal. 485.*

So there cannot be any Order for sending a poor Person to an extra-parochial Place. *R. Sal. 486, 487. Carth. 515.*

(B. 72.)
By Statute.

By the *St. 13 & 14 Car. 2. 12.* On Complaint of the Churchwardens and Overseers to a Justice of Peace, within forty Days after any Persons coming to settle in a Tenement under 10*l. per Ann.* two Justices of the Peace, (1 *Quor.*) of the Division may remove such Person likely to be chargeable, to the Parish where last legally settled as a Native, Householder, Sojourner, Apprentice, or Servant for forty Days at least, unless he give Security to be allowed by such Justices for the Discharge of the Parish. *Vide Appeal, Post, (B. 74.)*

Provided, if any come to any Parish for Harvest or other Work, with a Certificate from the Minister and a Churchwarden and Overseer of another Parish, declaring him an Inhabitant there, though he stay after the Work done, or fall sick, he shall not gain a Settlement, but be sent by two Justices to his Habitation in the other Parish. *Ibid.*

If the Continuance of forty Days be by Request, and Money given by the Parishioners of the other Parish, the Party shall be settled where he lived the forty Days. *R. 3 Mod. 67.*

If one hire a Mill of 10*l. per Ann.* it makes a Settlement; for it is a Tenement. *R. Sal. 536.*

If he hire 5*l. per Ann.* of one, and another 5*l. per Ann.* of another in the same Parish. *Sal. 535.*

By the *St. 1 Jac. 2. 17.* The forty Days to make a Settlement shall be accounted from Delivery of Notice in Writing of the Abode and Number of the Family, if any, to one of the Churchwardens or Overseers of the Parish.

And, by an equitable Construction of the Statute, an Act shall be accounted equivalent to Notice: As, if he pays Parish Rates; for then he does not conceal himself. *R. P. 1 W. & M. B. R. Sbo. 12. Carth. 28.*

Or lives in the Parish for four Years, and works in the Highway. *Semb. T. 3 W. & M.*

Or, be a Servant or Apprentice there. *Per Cur' M. 3 W. & M.*

By the *St. 3 & 4 W. & M. 11.* The forty Days to make a Settlement shall be accounted from the Publication of Notice in Writing of the Abode and Number of the Family, delivered to the Churchwarden or Overseer, which he shall cause to be read publickly in the Church next Lord's Day, and to be registered, on Pain of 40*s.* for Neglect of each to the Party grieved, to be levied on Proof by two Witnesses before a Justice of Peace, by Distress and Sale, and for want of Distress, &c. by Commitment to Gaol.

But no Soldier, or Workman in their Majesties Service, shall gain a Settlement by publishing such Notice, unless it be after his Dismission from their Majesties Service. Nor Service in a Ship, Boat, &c. *F. g. 253.*

Provided, no Notice needful, if any on his own Account execute in a Parish any annual Office, or Charge for a Year; or be rated, and pay his Share to the publick Taxes of the Parish, &c. or, being unmarried and childless, be lawfully hired for a Year, (and as it is declared by the *St. 8 & 9 W. 3. 30.* abide in the same Service during one whole Year; but that goes only to future Times.

R. Sal. 525. Or be bound Apprentice by Indenture, and inhabit in any Parish.

Now no collateral Act amounts to Notice: As, Bans of Marriage published in the Church. *5 Mod. 454.*

If he board, or be nursed in a Parish. *Sal. 524.*

So Notice shall not be presumed; for it is Matter of Evidence. *Sal. 472.*

Nor shall be supplied. *R. Sal. 476.*

It is sufficient, if the House be rated, and he pays. *R. Sal. 478.* for he must pay. *R. Sal. 523. Skin. 620.*

If he be chosen Parish Clerk, and has it for a Year. *R. Sal. 536.*

The Hiring must be for a Year at the first; for an Hiring for half a Year, and afterwards for another half Year; by the same Master and in the same Place, is not sufficient. *R. Sal. 535.*

Marriage in Service is not a Discharge from the Master, without his Will. *R. Sal. 527.*

Nor does it prevent the Settlement. *Sal. 527, 8.*

If he be married in the Service, it will be a Settlement, if he was not so at the Time of the Hiring. *Sal. 527.*

If a Man serve a Barber for a Year for 6*l.* to be instructed, without being bound, he will be a Servant there. *R. Skin. 671. **

If an Apprentice be assigned to a Master in another Parish, tho' it is not a proper Assignment, the Settlement will be good. *R. 1 Sal. 68.* * *[Sal. 479. S. C. Cont.]*

Otherwise, if put Apprentice by his Master by Agreement, without Indenture. *R. Sal. 479. **

An Apprentice, or Servant, continuing with his Master in B. shall be settled there, tho' the Master is not settled there. *R. Sal. 533.* * *[Skin. 671. S. C. Cont.]*

By the *St. 8 & 9 W. 3. 30.* If any Person bring a Certificate to the Churchwardens or Overseers, under the Hands and Seals of the major Part of the Churchwardens and Overseers of the other Parish, with two Witnesses; and allowed by two Justices of Peace, owning such Person or Persons to be settled there, such Certificate shall oblige the Parish that gave it, to receive such Persons and their Children, tho' born in the other Parish, not having otherwise acquired a legal Settlement, (which is acquired by the *St. 9 & 10 W. 3. 11.* only if he *bona fide* hire 10*l.* per Ann. or execute an annual Office there,) when they become a charge to, or ask Relief of the Parish to which the Certificate was given, and not before.

If a Man, reliant by Certificate, took an Apprentice by Indenture, he would have been settled there. *Adm. in the St. 12 Ann. 18.*

But by the *St. 12 Ann. 18.* Any, on or after the 24th June, 1713, bound Apprentice, or hired in a Service to one, who resides by Certificate only, shall gain no Settlement thereby.

A Man, who settles in a Tenement under 10*l.* per Annum of his own Inheritance, shall not be removed. *Per 2 J. Herbert cont. H. 2 & 3 Jac. 2. Per Holt, 5 Mod. 419.*

Or a Copyhold. *R. Tr. 4 Geo.*

Or, a Leasehold for 500 Years.

Yet, if a Man has Land in B; and never inhabits there, it is no Settlement. *Sal. 524.*

If he works, but does not lodge there. *2 Mod. Ca. 308, 369.*

If a Certificate be allowed, no Appeal lies for the Allowance. *Sal. 530.*

Nor shall a Man be removed, till he is an actual Charge. *Ibid.*

And there must be an Adjudication, that he was chargeable; for it is not sufficient to say, that there was a Complaint that he was a Charge. *R. Sal. 530.*

A Certificate does not make a Settlement, if he had it not before, but is Evidence of a Settlement with the Parish which gives it. *R. Sal. 530, 531.*

R. cont. 9 Ann; for it will be conclusive to all the World. *Sal. 535.*

[The first Settlement of a Person cannot cease but by gaining a new one. *Rex v. St. Botolph without Bishopsgate, H. 28 G. 2. B. S. C. No. 118.*]

[Therefore, if a Woman marries a Man who has no Settlement, her maiden Settlement remains, whether he is alive and absent, or dead, being never determined, but only as it were suspended, during the Time she is under her Husband's Power and Protection, and is maintained and supported by him. Not during his Life, as was supposed in the Case, *Rex v. Norton, H. 12 G. 2. B. S. C. No. 39.* where it was ruled contrary to the present Decision, which was made on great Deliberation. *Ibid. Westham v. Chidingstone, H. 12 G. Str. 683.*]

A Settlement is gained,

By Admini-
strator or
Executor.

[By the Husband of Administratrix of Assignee of a Term of 99 Years, living on the Premises. *Mursley v. Grandborough, T. 4 G. Str. 97. Fort. 302.*

[And Mortgagee for 15l. and Creditor by Bond and simple Contract for 18l. more, and Residence. *Rex v. Stockland, H. 15 G. 2. B. S. C. No 61. Str. 1162.*]

[By Executor entitled only to one Fifth of a Leasehold of 22l. per Annum, who proves the Will alone, and resides forty Days. *Rex v. Utoxeter, T. 5 G. 3. B. S. C. No. 172.*]

Apprentice-
ship.

[By Apprentice where he serves, though the Master to whom bound lives in another Parish. *Holy Trinity v. Shoreditch, M. 3 G. Str. 10. Allhallows v. Saint Olave, T. 9 G. Str. 554.*]

[By Apprentice (or Servant) where he lies, though in a Ship, and though he works and diets elsewhere. *Saint Mary Colechurch v. Radcliffe, T. 3 G. Str. 60. Fort. 306. Rex v. Feversham, P. 7 G. Fort. 221. Rex v. Saint John Baptist, T. 10 G. Fort. 321. Str. 594. Ld. Raym. 1371. Rex v. Burton Bradstock, P. 5 G. 3. B. S. C. No. 171. Rex v. Castleton, M. 7 G. 3. B. S. C. No. 183.*]

[By Apprentice of a Certificate-Man, after he has purchased an Estate. *Ivinghoe v. Stonebridge, H. 6 G. Str. 265.*]

[By Apprentice living forty Days, though not at one Time. *Rex v. Cirencester, H. 10 G. Str. 544.*]

[Or, residing the last forty Days, though a Cripple, and not able to perform actual Service. *Rex v. Charles, T. 12 G. 2. B. S. C. No. 221.*]

[By Parish-Apprentice let out by the Master by Parol for Hire, without Assent of Justices, into another Parish where he resides above forty Days, the Master receiving the Wages and finding Cloaths. *Rex v. Saint George, M. 8 G. 2. B. S. C. No. 5. Str. 1001.*]

[By Apprentice allowed by his Master to work for his own Benefit, paying him 12d. a Week, and Master furnishing a Loom, where he resides, separate from his Master. *Rex v. Offerton, P. 15 G. 3. B. S. C. No. 250.*]

[By Apprentice bound only for four Years. *Rex v. Saint Nicholas, M. 10 G. 2. B. S. C. No. 28. Str. 1066.*]

[By

[By Apprentice assigned over by Widow (who had not administered) to a Certificate-Man, who by Parol assigns (without the Widow's Knowledge, but she afterwards approved) to a third; settled with the third. *Rex v. East Bridgeford*, T. 13 G. 2. B. S. C. No. 43. Str. 1115. *Rex v. Petham*, M. 14 G. 2. B. S. C. No. 54.]

[Yet Apprentice verbally dismissed by Master's Widow, who had not administered, is settled where he served his Master. *Rex v. Chirk*, T. 14 G. 3. B. S. C. No. 242.]

[By Apprentice, though Duty not paid for thirty Shillings given his Master to clothe him. *Rex v. North Oworm*, P. 13 G. 2. B. S. C. No. 48. Str. 1132.]

[Tho' the Apprentice is to be found all Necessaries by his Father, and no Duty paid for such Maintenance, Master allowing 4s. per Week for it, which is an equivalent. N. B. The Master is not obliged to answer a Question, which tends to contradict his Deed. *Rex v. Portsea*, T. 16 G. 3. B. S. C. No. 261.]

[By Apprentice assigned by Indorsement on the Back of Indenture, (voidable, and afterwards declared void by Sessions,) without Assent of Justices. *Rex v. Saint Petros*, T. 19 G. 2. B. S. C. No. 84.]

By Parish-Apprentice assigned (without Assent of Justices) from first to second Master, and by him, without Assent of first, or of Justices, to third, the Consent of second including that of first. *Rex v. Clapham*, P. 20 G. 2. B. S. C. No. 91. *Rex v. Tavistock*, T. 7 G. 3. B. S. C. No. 186.]

[By Apprentice to a Mariner, though for four Years only, and the Indenture is not intolled, nor the forty Days Inhabitaney at one Time. *Rex v. Gainsborough*, P. 8 G. 3. B. S. C. No. 189.]

[By Apprentice, though the Consideration-Money, being 6d. was not inserted in the Indenture. *Rex v. Yarmouth*, H. 28 G. 2. B. S. C. No. 120.]

[Or though the Indentures are not stampd pursuant to St. 8 Ann. c. 9. if the Consideration was paid out of a voluntary, yearly, charitable Subscription. *Rex v. Bethnal Green*, H. 7 G. 3. B. S. C. No. 185.]

[Or, if the Consideration was paid out of a Legacy, some of which was to be given to put Children out Apprentices; for it is a publick Charity. *Rex v. Clifton*, H. 12 G. 3. B. S. C. No. 219.]

[By Apprentice, though the Indentures are lost, or not produced, if other Evidence is given of it. *Rex v. East Knoyle*, T. 13 & 14 G. 2. B. S. C. No. 51. *Rex v. Saint Michael, Bath*, H. 13 G. 3. B. S. C. 227.]

[By Apprenticeship under a second Indenture, the first being cancelled by Master, Father, and Apprentice. *Rex v. Weddington*, P. 14 G. 3. B. S. C. No. 239.]

[By Apprentice to a Certificate-Man, who removes to another Parish, if he serves forty Days there. *Rex v. Saint Peter's, Nottingham*, P. 29 G. 2. B. S. C. No. 125. *Rex v. Spotland*, H. 5 G. 3. B. S. C. No. 170.]

[Or, though the Master, after the Expiration of the Term, gets a Certificate to the same Parish. *Rex v. Cliftbeydon*, H. 14 G. 2. B. S. C. No. 56.]

[Or, if the Certificate cannot be found, though the Master said he came by one. *Rex v. Saint Maurice, Winchester*, M. 24 G. 2. B. S. C. No. 106.]

[By Apprentice in the Parish to which he had formerly, with his Father, been certificated, but removed on being chargeable, before the Apprenticeship began. *Rex v. Sudbury*, H. 28 G. 2. B. S. C. No. 119.]

[By Apprentice in a Parish to which his Grandfather had been long before certificated, and had left it, and had the Pauper's Father afterwards, who never had been in that Parish; for the Certificate shall be deemed waived or deserted. *Rex v. Taunton Saint Mary Magdalen*, T. 29 & 30 G. 2. B. S. C. No. 129. N. B. The Case of *Rex v. Sowerby* is not contrary to this, for it was determined on another Point, viz. the Indentures not being stampd according to 5 W. & M. B. S. C. No. 130.]

[By Apprentice, Son of a Certificate-Man, and born in the Parish to which certificated, and serving Apprenticeship in a third Parish. *Rex v. Selton*, H. 21 G. 2. B. S. C. No. 92.]

[By

[By Apprentice to a Man certificated from *A.* to *B.* where he resided some Years, and thence went to *C.* where he delivered the Certificate to the proper Officer, and purchased a House for 10*l.* in which he lived. *Rex v. Bishopstoke*, T. 28 G. 2. B. S. C. No. 122.]

[By Apprentice serving five Years, tho' the Indentures then exchanged, and a subsequent Agreement to be Apprentice for four Years to a third Person, but no Indenture executed; and Service thereupon, which the first Master knew; Settlement with the first. *Rex v. Saint Mary Kalendar*, T. 21 & 22 G. 2. B. S. C. No. 95.]

[By Apprentice with a second Master, whom he serves above forty Days with the Consent of the first, but without Assignment. *Rex v. Fremington*, P. 30 G. 2. B. S. C. No. 133.]

[By Apprentice married at the Time of binding, by forty Days Habitation, tho' then being sick he goes away to his Father's, with his Master's Consent, and lives there forty Days, the Indentures being given up, but not cancelled. *Rex v. Tichfield*, M. 4 G. 3. B. S. C. No. 164.]

[By Apprentice, where he lives the last forty Days with his Master; who then bids him go where he will, and work for himself; but the Indentures not cancelled, nor delivered up, and he hires himself to several Masters. *Rex v. Saint Luke*, T. 5 G. 3. B. S. C. No. 174.]

[By Stat. 31 G. 2. c. 11. Person bound Apprentice by Deed, and the Duty paid, and resident forty Days, cannot be removed because the Deed, &c. was not indented.]

Birth.

[By Bastard, whether of Certificate-Man or other, where born. *New Windsor v. White Waltham*, T. 5 G. Str. 186. *Fort*, 304. *Rex v. Saint Peter's, Worcester-shire*, P. 8 G. 2. B. S. C. No. 9. *Rex v. Helton*, T. 16 G. 2. B. S. C. No. 66. *Rex v. Wyke*, T. 19 & 20 G. 2. B. S. C. No. 90.]

[But if a Certificate takes Notice, that the Woman is single and pregnant, and promises to provide for the Infant she goes with, they are bound by the Certificate. *Rex v. Ipsley*, M. 10 G. 3. B. S. C. No. 201.]

[By Bastard (born in a Parish whence the Mother had been removed by Order, and returned there again) at the Mother's Settlement. *Landinaboe v. Much Birch*, M. 8 G. Str. 476. *Sed Q.*]

[Extract of Register and Witness, that one was always considered, as the Son of *A.* now dead, and *B.* who does not attend, nor send Excuse, tho' subpoena'd, sufficient. *Rex v. Creech Saint Michael*, P. 14 G. 3. B. S. C. No. 238.]

[By Stat. 13 G. 3. c. 82. Bastard Child born in Lying-in-Hospital, is not settled in that Parish, but follows the Mother's Settlement. This does not extend to Cases where the Mother's Settlement is not known.]

[Lying-in-Hospital must be licensed at Quarter-Sessions.]

Certificate-man.

[By Certificate-Man living on Copyhold, descended or surrendered by her Father to his Wife. *Burckear v. Eastwoodbay*, P. 5 G. Str. 163. *Rex v. Shenston*, M. 32 G. 2. B. S. C. No. 149.]

[By Certificate-Man, the Father of whose Wife dies intestate, possessed of an Estate for 99 Years, determinable on the Death of the Wife, leaving her and five other Children, and the Certificate-Man enters upon and takes Possession, and lives upon the Estate for 29 Years, tho' he (nor any other) ever took out Administration. *Rex v. Cold Ashton*, H. 31 G. 2. B. S. C. No. 143.]

[By renting Farm of 10*l.* in two Parishes, but the House in the Parish receiving the Certificate, *Saint John's Hertford v. Amwell*, M. 9 G. Str. 529. *Case of Stapleford*, P. 4 G. 2. Str. 849.]

[By executing for a Year, on being legally placed in it, an annual Office, tho' not a parochial one, Settlement in the Parish where he lives. *Saint Maurice v. Saint Mary Kalendar*, P. 8 G. 2. Str. 1014. B. S. C. No. 10. *Rex v. Thistleworth*, M. 18 G. 2. B. S. C. No. 81.]

[By making purchase of 30*l.* Value, and living upon it. *Rex v. Stanfield*, P. 16 G. 2. B. S. C. No. 72. *Rex v. Doddington*, T. 16 & 17 G. 2. B. S. C. No. 75.]

[A Certificate is valid, tho' the Words *legally settled* be not in it, if there are Words tantamount. *Rex v. Hilpertion, P. 17 G. 2. B. S. C. No. 77.*]

[So if it is signed and sealed by two Churchwardens and two Overseers, where there are six Churchwardens and four Overseers. *Rex v. Tamworth, P. 14 G. 3. B. S. C. No. 240.*]

[Invalid, if not allowed by two Justices, pursuant to Stat. 8 & 9 W. 3. *Rex v. Wooton Saint Lawrence, H. 8 G. 3. B. S. C. No. 187.*]

[And so if it is witnessed by two Justices, but without Words of Allowance. *Horncastle v. Boston, P. 4 G. Str. 94. Fort. 301.*]

[So if one Witness swears he was present with the other, and saw the Churchwardens, &c. sign, and that *his* Name is his Hand-writing, tho' he does not say the other's Name is his Hand-writing. *Rex v. Aston Keynes, H. 13 G. 3. B. S. C. No. 225. N. B.* The other Witness was a Marksman and thirty Years had elapsed.]

[It does not bind the Parish giving it, unless it be in the Terms of the Statute. *Rex v. Saint George, Southwark, H. 22 G. 2. B. S. C. No. 99.*]

[It need not be directed to any Parish, nor be delivered to a Parish-Officer. *Rex v. Saint Nicholas Harwich, H. 15 G. 2. B. S. C. No. 62.*]

[A Certificate-Man may gain a Settlement in a third Parish, for a Certificate concerns only the Parish giving it, and to whom it is first given, and there it ought to be left. *Rex v. Bishopside, T. 28 G. 2. B. S. C. No. 122. Rex v. Heptonstall, T. 10 G. 2. B. S. C. No. 26. Rex v. Petbam, M. 14 G. 2. B. S. C. No. 54. Rex v. Sherborne, P. 15 G. 2. B. S. C. No. 65. Rex v. Silton, H. 21 G. 2. B. S. C. No. 92. Rex v. Horsley, T. 28 G. 2. B. S. C. No. 123. Rex v. Saint Peter's Nottingham, P. 29 G. 2. B. S. C. No. 125.*]

[If a Certificate is given, acknowledging a second Wife, when there is a first living, tho' the Parish knew it not, they are obliged to maintain both and their Children. *Rex v. Headcorn, T. 19 G. 2. B. S. C. No. 86.*]

[Certificate acknowledging A. and B. and C. their Son, as Inhabitants, is good for C. tho' a Bastard, and the Parish knew it not. *Rex v. Tostock, H. 13 G. 3. B. S. C. No. 228.*]

[Certificate-Man, or any of his Family, tho' born of another Wife, and after Certificate granted, cannot gain a Settlement in the Parish to which he is certificated, but by hiring Tenement of 10*l.* yearly Value, or executing an annual Office in the Parish. *Rex v. Sherborne, P. 15 G. 2. B. S. C. No. 65. Rex v. Bray, H. 19 G. 2. B. S. C. No. 88. Rex v. Buckingham, H. 25 G. 2. B. S. C. No. 112. Rex v. Letchlade, H. 28 G. 2. B. S. C. No. 121. Rex v. Alton, P. 30 G. 2. B. S. C. No. 134. N. B.* This is not to be understood as preventing their gaining Settlement by purchasing 30*l.* Value, or by gaining any Estate by Operation of Law.]

[If a Certificate-Man by Devise has free Liberty and Power to dwell in a House during Life, it is a Discharge of the Certificate, and he gains Settlement. *Rex v. Woburn, T. 14 G. 3. B. S. C. No. 244.*]

[A certificated Person serving an Apprenticeship, or otherwise gaining Settlement in a third Parish, becomes clear of the Certificate, and may afterwards gain a Settlement in the Parish to which he was certificated. *Rex v. Great Torrington, T. 30 & 31 G. 2. B. S. C. No. 136. Rex v. Keynsham, T. 30 & 31 G. 2. B. S. C. No. 137. Rex v. Ashchurch, H. 31 G. 2. B. S. C. No. 137.*]

[By any Estate, whether Freehold, Copyhold or Leasehold, which a Man gets Estate by Descent or Devise, or Gift, or Marriage, or Operation of Law, of what Value soever, and residing upon it. *Mursley v. Grandborough, T. 4 G. Str. 97. Fort. 302. Rex v. Sundriss, T. 7 & 8 G. 2. B. S. C. No. 4. Rex v. Marwood, H. 29 G. 2. B. S. C. No. 124. Rex v. Ingleton, P. 6 G. 3. B. S. C. No. 179. Rex v. Ilmington, T. 6 G. 3. B. S. C. No. 182. Rex v. Saint Mary Whitechapel, T. 8 & 9 G. 2. B. S. C. No. 17.*]

[By a Widow residing on Estate wherein she hath Right of Dower forty Days, but she does not communicate the Settlement to a second Husband nor their Children residing there with her. *Rex v. Painswick, T. 14 G. 3. B. S. C. No. 243.*]

[Or tho' the forty Days be not successive, or on the Estate, but in the Parish, at an Alchouse, as a Guest. *Rex v. Sowton, H. 12 G. B. S. C. No. 40.*]

[Or tho' he is only Tenant in common with others. *Rex v. Saint Nyotts, T. 13 G. 2. B. S. C. No. 42. Str. 1116.*]

[By Purchase of a House for 39 l. tho' 30 l. of it was advanced by another by his Order, and the Premises soon after mortgaged for it, and Residence on it for four Years, till the Mortgagee entered, and had Release of the Equity of Redemption. *Waddington v. Tedford, P. 8 G. 2. Str. 1014. B. S. C. No. 18.*]

[By Purchase of above 30 l. tho' great Part of the Money borrowed, and Estate mortgaged for it, and immediately let, the Purchaser never lived upon it, but lived in the Parish, and was rated to and paid the Land-tax and has since sold it. *Rex v. Acton Beauchamp, T. 26 & 27 G. 2. B. S. C. No. 116.*]

Executing.

[The Office of Collector of Duties on Births and Burials. *Rex v. Bickham, H. 7 G. Str. 411. Fort. 304.*]

[The Office of Tithingman. *Burlescombe v. Sampford Peverill, H. 9 G. Str. 544.*]

[The Office of Ale-taster in a Borough, tho' not a fifth Part of the Parish. *Rex v. Whitechurch, T. 27 & 28 G. 2. B. S. C. No. 117.*]

[Schoolmaster (licensed by Ordinary) of free Grammar-School, and Clerk of a parochial Chapel. *Rex v. Preston, P. 9 G. 2. B. S. C. No. 24.*]

Habitation.

[If a Man lives forty Days where he is not removeable, he is settled there. *Paffin.*]

[Except on his own Purchase under the Value of 30 l. by Stat. 9 G. c. 7. he cannot be removed, yet gains no Settlement; and so, where a Woman whose Husband is absent, resides on his Estate. *Rex v. Aythrop Rooding, M. 30 G. 2. B. S. C. No. 131.*]

[By inhabiting on an Estate whereof there has been long Possession, tho' the Title does not appear, at least till the Right is determined. *Ashbottle v. Wyley, M. 11 G. Str. 608. Rex v. Bitton, M. 9 G. 3. B. S. C. No. 194. Rex v. Garway, M. 9 G. 3. B. S. C. No. 195.*]

[By Person who is intitled to a distributive Share of the Money to be raised by Sale of an Estate, residing on it. *Per Gould J. Rex v. Natland, M. 15 G. 3 B. S. C. No. 247.*]

Hiring and Service.

By a general Hiring, for that is a Hiring for a Year. *Rex v. Wincaunton, H. 24 G. 2. B. S. C. No. 107. Rex v. Berwick Saint John, P. 33 G. 2. B. S. C. 160.*

[By general Hiring and Year's Service, tho' no Mention of Wages or Maintenance, and tho' such Servants (Postillions in an Inn) and their Masters think themselves at Liberty to Part. *Rex v. Stockbridge, M. 14 G. 3. B. S. C. No. 236. Rex v. Bath-Easton, H. 16 G. 3. B. S. C. 257.*]

[By a conditional Hiring, with a Year's Service. *Rex v. Lidney, T. 6 & 7 G. 2. B. S. C. No. 1. Str. 950. Rex v. New Windsor, H. 8 G. 2. B. S. C. No. 7. Rex v. Atherton, H. 16 G. 2. B. S. C. No. 71. Rex v. Saint Ebbs, H. 22 G. 2. B. S. C. No. 101.*]

[By Service in the same Farm under successive Masters, without any Discharge by the old, or Agreement with the new. *Rex v. Ivinghoe, P. 4 G. Str. 90. Fort. 317.*]

[By Servant, tho' sick and absent, or absent with Leave, or without Leave but received again, or absent without Leave, being sick at the End of Term, and never returning. *Rex v. Islip, P. 7 G. Str. 423. Fort. 305. Rex v. Eaton, T. 8 & 9 G. 2. B. S. C. No. 14. Rex v. Goodnestone, T. 19 G. 2. B. S. C. No. 85. Rex v. Nether Heyford, P. 32 G. 2. B. S. C. No. 152. Rex v. Christ-church, P. 33 G. 2. B. S. C. No. 158. Rex v. Maddington, H. 11 G. 3. B. S. C. No. 211. Rex v. Bray, P. 11 G. 3. B. S. C. No. 214. Rex v. Richmond, P. 13 G. 3. B. S. C. No. 229.*]

[By

[By Servant, tho' his Master force him away two Days before the Expiration. *West Hertley v. East Clendon*, T. 8 G. Fort. 216. Str. 526.]

[Or tho' the Servant goes away with Leave, ten Days before the Expiration, to see his Relations, because he wishes not to be settled there. *Rex v. Frome Selwood*, T. 6 G. 3. B. S. C. No. 181. *Rex v. Potter Higham*, T. 11 G. 3. B. S. C. No. 216. Sed. 2, why he was not settled at *Hardley* ?]

[By Servant where he lives, though his Master not settled, nor ever living there. *Rex v. Saint Peter's Oxon, and Wycomb*, M. 9 G. Fort. 318. Str. 528. *Bishops Hatfield v. Saint Peter's*, M. 1 G. 2. Str. 794. *Rex v. East Ilfley*, M. 13 G. 3. B. S. C. No. 223.]

[By Servant attending his Master on a Visit. *Rex v. Saint Peter's Oxon*, T. 8 G. Str. 524. Sed N. It appears that the Master had no Domicil, but sometimes lived with one Daughter-in-law, and sometimes with the other; and where the last forty Days Service was, was adjudged the Settlement. *Per Ld. Mansfield*, B. S. C. 422.]

[By a Hiring for a Year, and Service for a Year, though the whole Year's Service is not under the Year's Hiring, and even though some Part of it is prior to the Year's Hiring. *Brightwell v. West Hanning*, H. 1 G. *Rex v. Aynhoe*, M. 1 G. 2. *Ld. Raym.* 1511. *Hanmer v. Ellesmere*, M. 4 G. 2. Str. 878. And though an Hour intervene between the two. *Rex v. Fifehead*, M. 11 G. 2. B. S. C. No. 37. *Rex v. Underbarrow*, H. 6 G. 2. B. S. C. No. 175. *Rex v. Spaunton*, P. 15 G. 3. B. S. C. No. 249.]

[By Hiring and Service for a Year to spin at 18 d. per Stone, and find her own Victuals and Lodging. *King's Norton v. Camden*, T. 13 G. 2. Str. 1139. B. S. C. No. 52.]

[By conditional Hiring of a married Man, which was confirmed, and all the Service after the Wife's Death without Issue. *Rex v. Bank Newton*, P. 31 G. 2. B. S. C. No. 145.]

[By Hiring for a Year and Service, though the Wages paid from Time to Time, and though the Servant goes several Times with Leave, to work with others, and receives Wages for it, only abating to his Master *pro Rata* of his yearly Wages. *Rex v. Beccles*, P. 17 G. 2. B. S. C. No. 78.]

[By Hiring and Service, and forty Days Residence, though not at one Time. *Rex v. Greenwich*, M. 18 G. 2. B. S. C. No. 82.]

[Where the last forty Days Service are performed, without any new Contract, though a Year's Service had been performed in another Parish under the Hiring for a Year. *Rex v. Croftcombe*, M. 19 G. 2. B. S. C. No. 87.]

[Where the last forty Days Service tho' at a Place of public Resort, the Service ending there. *Rex v. Bath-Easton*, P. 14 G. 3. B. S. C. 241.]

N. B. The Difference between this and *Rex v. Alton*, B. S. C. No. 134. is that there the Service did not end at the public Place.]

[Servant sometimes at A. where his Master resides, sometimes at B. where he has a Farm, lives at B. the last forty Days successively, but more than forty Days in the Whole at A. and lodges there the last Night settled at A. *Rex v. Lowness*, P. 16 G. 3. B. S. C. 258.]

[By Hiring and Service by an Apprentice after his Master's Death. *Rex v. Eakdring*, P. 26 G. 2. B. S. C. No. 114.]

[Or by Parish-Apprentice, if the Indentures are cancelled, he being of Age, though without the Consent of the Parish-Officers. *Rex v. Eccleshall Bierlow*, P. 6. G. 3. P. S. C. No. 180.]

[By Hiring for a Year, though at the End of three Quarters the Servant was discharged against his Consent, and the Discharge allowed by a Justice (because he had married) but without Order in Writing. *Rex v. Hanbury*, T. 26 & 27 G. 2. B. S. C. No. 115.]

[By Hiring for eleven Months, and to give in a Month's Service, and serving accordingly all but three Days, and receiving the whole Wages. *Rex v. Milwich*, T. 30 & 31 G. 2. B. S. C. No. 139.]

[By the last forty Day's Service with the Executor of the original Master, in continuance of the original Contract. *Rex v. Ladoch*, P. 15 G. 2. B. S. C. No. 64.]

[By

[By Hiring for three Years under certain Conditions, and Service for six Months, then absent for three Months, being ill, and then serving nine Months, till he was removed by Order of Justices. *Sed N.* it seems as if the Orders were quashed, because they removed the Pauper whilst in actual Service. *Rex v. Oxleworth, T. 24 & 25 G. 2. B. S. C. No. 108.*]

[By Hiring from *Whitsuntide* to *Whitsuntide*, though short of 365 Days, being the Custom of the Country. *Rex v. Newstead, T. 10 G. 3. B. S. C. No. 208.*]

[Or at a Statute Fair the Day after old *Michaelmas* to old *Michaelmas* following, being the Custom of the Country. *Rex v. Navestock, M. 13 G. 3. B. S. C. No. 222.*]

N. B. This is actually 365 Days, including the Day of Hiring, and the last Day of the Service.]

[By Militia Man; tho' the Contract is that he may be absent a Month on that Duty and to abate of his Wages for it, and it so happens. *Rex v. Westerleigh, M. 14 G. 3. B. S. C. No. 234.*]

[By Hiring for a Year, though the Servant does not work on *Sundays* and *Holidays*, by the Custom of the Country; but that must not be Part of the original Contract. *Rex v. Saint Agnes, T. 10 G. 3. B. S. C. 209. Rex v. Buckland Denham, H. 12 G. 3. B. S. C. No. 218.*]

[Hiring for a Year may be proved by Implication, as that *A.* was hired by *B.* to serve as Under-carter to *C.* and *C.* served the Year. *Rex v. Nutley, P. 12 G. 3. B. S. C. No. 220.*]

By the Son of a Certificate-man from under the Certificate, hired and serving in a third Parish. *Rex v. Horsley, T. 28 G. 2. B. S. C. 123.*]

Marriage.

[It is not incumbent on the Persons married to prove that the Banns were published, nor does the Entry directed to be made (of the Banns and Marriage, *semb.*) affect the Validity of the Marriage. *Rex v. Saint Devereux, P. 2 G. 3. B. S. C. 162.*]

Parentage.

[By Certificate-man's Children in his Parish, though the Woman after his Death swears they were never married. *New Windsor v. White Waltham, T. 5 G. Str. 186. Fort. 304.*]

[By a Son of ten Year's old living with his Father at *A.* though the Father afterwards without him gains a Settlement at *B.* *Eastwoodbay v. Westwoodbay, T. 7 G. Str. 438.*]

[By the Children of a Widow who gains a Settlement after her Husband's Death. *Saint Katherine v. Saint George, T. 1 G. Fort. 218. Rex v. Woodend, H. 12 G. Fort. 328. S. C. Paulsbury v. Woodon. Str. 746. Ld. Raym. 473. Rex v. Barton Turfe, T. 8 & 9 G. 2. B. S. C. No. 15.*]

[By a legitimate Child at his Father's Settlement, though he (the Child) was never there. *Eversley Blackwater v. Saint Giles, H. 10 G. Fort. 320. Ld. Raym. 1332. Str. 580.*]

[By Son who has served an Apprenticeship, and afterwards works about the Country for himself, but comes to his Father's when he pleases, (tho' he pays for what he has) considers it as his Home, and has his Holiday Cloaths there. *Rex v. Halifax, P. 15 G. 3. Ld. Mansfield absent. B. S. C. 251.*]

By Children, of a Father, having no Settlement at the Settlement of the Mother. *Rex v. Saint Botolph without Bishopsgate, H. 28 G. 2. B. S. C. No. 118. Rex v. Saint Matthew Bethnal-Green, M. 33 G. 2. B. S. C. No. 153.*]

[By Children at their Father's Settlement after thirty Year's Cohabitation with the Mother, though the Marriage is doubtful; and the Husband shall not be admitted to disprove it. *Rex v. Stockland, T. 2 G. 3. B. S. C. 163.*]

[By Children of a Certificate-man where he gains a Settlement by Purchase. *Rex v. Deddington, T. 16 & 17 G. 2. B. S. C. No. 75.*]

[If Father and Mother are removed as Man and Wife, and the Order confirmed, their Children born afterwards shall have the Father's Settlement, and

Evidence shall not be allowed to shew that the Father and Mother were not married. *Rex v. Woodchester*. M. 16 G. 2. B. S. C. No 67.]

[By renting 10 *l.* a Year in Value, though the Rent is smaller. *South Sydenham v. Lameaton*, T. 3 G. Str. 57. *Rex v. Saint Matthew Bethnal Green*, H. 7 G. 3. B. S. C. 185. *Rex v. Bilsdale Kirkham*, P. 16 G. 3. B. S. C. No. 260.]

[By renting 10 *l.* a Year, tho' the Landlord is to pay Parish Rates. *Rex v. Framlingham*, T. 13 G. 3. B. S. C. No. 233.]

[By renting an intire Tenement of 10 *l.* in two Parishes, Settlement where the House stands. *South Sydenham v. Lameaton*, T. 3 G. Str. 57. *Rex v. Saint Matthew Bethnal Green*. H. 7 G. 3. B. S. C. 185.]

[By renting 9 *l.* 10 *s.* in one Parish, and 3 *l.* in another adjacent, (though separate Tenements,) of the same Person, Settlement where he lives. *Elsted v. Holliburne*, M. 3 G. 2. Str. 849.]

[By a Lease at Will, and Occupation. *Cranly v. Saint Mary Guilford*, H. 8 G. Str. 502.]

[By renting a Coney-warren. *Kinver v. Stone*, H. 12 G. Str. 678.]

[By a Prisoner renting a House within the Rules, and paying Taxes. *Saint Margaret v. Saint Martin*, H. 5 G. 2. Str. 924.]

[By renting a Windmill. *Rex v. Butley*, T. 10 G. 2. Str. 1077. B. S. C. No. 33.]

[By renting 10 *l.* though it is too dear, though he has said it was to gain a Settlement, and though he is not of Ability to stock it. *Rex v. Weston*, T. 14 & 15 G. 2. B. S. C. No. 59.]

[By taking for a Year, and living there half a Year, and paying the half Year's Rent. *Rex v. Winterbourn*, H. 4 G. 3. B. S. C. No. 167.]

[By renting Tenement of 10 *l.* and paying the whole Rent, and living above forty Days in Part of it worth 40 *s.* without ever occupying the rest, but letting it off to Under-tenants immediately. *Rex v. Llandverras*, M. 7 G. 3. B. S. C. No. 184.]

[By renting 10 *l.* whether distinct or intire, whether in one Parish or more, Settlement where he lives. *Rex v. Sandwich*, T. 8 & 9 G. 2. B. S. C. No. 13. *Rex v. Saint Lawrence Winchester*, P. 8 G. 3. B. S. C. No. 190.]

[By renting the Moiety of a Tenement as Tenant at Will, where the Moiety exceeds 10 *l.* per Annum, whether it is taken jointly of the Landlord, or whether the original Tenant takes in a Partner. *Rex v. Duns Tew*, T. 29 & 33 G. 2. B. S. C. No. 128.]

[By renting 10 *l.* solely, tho' stocked and occupied with a Partner. *Rex v. Newnham*, M. 14 G. 3. B. S. C. No. 235.]

[By renting Tenement of 10 *l.* yearly Value, though it is not taken for a whole Year; and forty Day's Residence. *Rex v. Shenstone*, P. 32 G. 2. B. S. C. No. 151. *Rex v. Saint Lawrence Winchester*, P. 8 G. 3. B. S. C. No. 190. *Rex v. Stanton under Bardon*, H. 6 G. 3. B. S. C. No. 178. *Rex v. Saint Matthew Bethnal-Green*, H. 7 G. 3. B. S. C. No. 185.]

[By renting Stable by a Job-Coachman for the Standing of the Horses supplied by him to the Lessor. *Rex v. Saint Margaret Fish-street*, H. 11 G. 3. B. S. C. No. 212.]

[By renting Part of a House and furnishing it, though only one Door and one Stair-case used in common with other Persons. *Rex v. Saint George Hanover-square*, T. 11 G. 3. B. S. C. No. 217. *Sed N.* This was ruled late at Night, and no Defence made, and seems contrary to the Doctrine laid down by Lord Hardwicke, that no Part of a House can be said to be in the Tenure or Occupation of a Lodger. *Fludier v. Lombe*, T. 9 G. 2. B. C. H. 307.]

[(Part of House) but this Doctrine is now established. *Rex v. Saint Giles*, H. 15 G. 3. B. S. C. No. 248.]

[By being rated and paying, for both are necessary. *Rex v. Sarratt*, M. 9 Taxes. G. 2. B. S. C. No. 21. Str. 1123. *Rex v. Lower Walton*, H. 10 G. 2. B. S. C. No. 30.]

[But if the Rate is thus, "T. C. or Tenant," and the Tenant pays, he gains Settlement; for this is sufficient Notice, and it is not necessary that he be expressly named. *Rex v. Painswick*, T. 31 G. 2. B. S. C. No. 148.]

[A Writing is shown a Man on Demand of Land Tax, he is distrained for it, settled, tho' the original Rate not produced. *Rex v. Saint Isley*, P. 16 G. 3. B. S. C. No. 259.]

[Though the Tenement is not of 30*l.* Value, if it comes by Marriage-Settlement. *Rex v. Worth*, M. 10 G. 2. B. S. C. No. 27. Or even though it be by Purchase. *Rex v. Uffculme*, T. 30 & 31 G. 2. B. S. C. No. 138.]

[Though it is not a parochial Tax (as Land-Tax) and though it is not for a whole Year. *Rex v. Bramley*, H. 9 G. 2. B. S. C. No. 22.]

[Though the Tenant is repaid by his Landlord, and that by previous Agreement. *Rex v. Ebdingfold*, H. 30 G. 2. B. S. C. No. 132. *Rex v. Fulham*, M. 33 G. 2. B. S. C. No. 155. *Rex v. Openshaw*, P. 4 G. 3. B. S. C. No. 168.]

[By a Tide-water rated and paying to Land-tax, tho' repaid by the Collector. *Rex v. Oakehampton*, P. 7 G. 2. B. S. C. No. 3.]

[By a Man occupying nothing, but living with his Mother an Occupier, and he charged as Occupier, and paying Rates accordingly. *Rex v. Stapleton*, M. 10 G. 3. B. S. C. No. 200.]

A Settlement is *not* gained by

Administra-
tor.

[Having the Remainder of a Term in a Cottage, unless he takes out Letters of Administration within that Term. *Rex v. Widworthy*, T. 10 & 11 G. 2. B. S. C. No. 34.]

Apprentice-
ship.

[By Apprentice, where the Master keeps Shop in one Parish and lies in another, and the Apprentice in a third. *Rex v. Saint Olave Jewry*, P. 3 G. Str. 51. *Sed contra post.*]

[If the Duty on Apprentices is not paid, in Cases when it ought to be paid. *Curenden v. Laland*, P. 4 G. 2. Str. 903. Or, if the Indentures are not stamped according to 5 W. & M. c. 21. §. 11. *Rex v. Holbeck*, M. 16 G. 2. B. S. C. No. 69. *Rex v. Llanvair*, T. 17 & 18 G. 2. B. S. C. No. 80. *Rex v. Sowerby*, H. 24 G. 2. B. S. C. No. 130.]

[Where no Indenture is executed. *Rex v. Stratton*, P. 21 G. 2. B. S. C. No. 94. *Rex v. Saint Mary Kalendar*. B. S. C. No. 95. *Rex v. Whitchurch Canonorum*, T. 5 G. 3. B. S. C. No. 173. *Rex v. All-saints Hereford*, H. 10 G. 3. B. S. C. No. 203. *Rex v. Kingsweare*, T. 16 G. 3. B. S. C. No. 262.]

[By Parish-Apprentice, not Party to the Indenture, if one of the Justices is not said to be of the *Quorum*. *Rex v. Woolstanton*, P. 12 G. 2. Str. 1110. B. S. C. No. 41.]

[Unless a Binding within the Act appears. *Rex v. Saint Helen's Abington*, T. 22 & 23 G. 2. B. S. C. No. 104.]

[If the Master, tho' he had not a Certificate, at the Time of binding, yet obtains one before the Apprentice has served forty Days. *Rex v. Westbury*, H. 32 G. 2. B. S. C. No. 150.]

[If it appears to have been only by a parol Binding. *Rex v. Mawnan*, H. 22 G. 2. B. S. C. No. 102.]

[By the Apprentice's serving another without the Privity of his Master, who had failed. *Rex v. Puckington*, P. 10 G. Fort. 321. *Ld. Raym.* 1352. Str. 582.]

[Where the Apprentice serves without the Consent, tho' with the Knowledge of the Master. *Rex v. Ideford*, H. 16 G. 3. B. S. C. No. 256.]

[Or by serving another after the Indentures are delivered up, tho' the Time is not expired, and the Master knows and approves of it. *Rex v. Norton*, M. 9 G. 3. B. S. C. No. 193.]

[By being turned over, and serving a Certificate-Man. *Rex v. Rumsey infra*, P. 9 G. 3. B. S. C. No. 198.]

[By fraudulent hiring of 10*l.* per Ann. *Rex v. Saint Nicholas Harwich*, H. 15 G. 2. B. S. C. No. 62.] Certificate-man.

[By being charged to and paying Rates. *Ibid.*]

[By executing an annual Office, if not legally placed in it. *Rex v. Wingham*, M. 17 G. 2. B. S. C. No. 76.]

[Or, if he does not execute it for a whole Year. *Rex v. Fittleworth*, M. 18 G. 2. B. S. C. No. 81.]

[By executing the Office of Schoolmaster, with a Salary of 10*l.* per Annum, which by Will was given to the Vicar. *Rex v. Milborne*, P. 18 G. 2. B. S. C. No. 83.]

[If there is not Residence. *Wookey v. Hinton Blewett*, M. 8 G. Str. 476.] Estate.

[If the Interest in it determines before forty Days Residence. *Rex v. West Shefford*, M. 25 G. 2. B. S. C. No. 110.]

[If the Purchase is under 30*l.* tho' the Purchaser is irremovable during the Time of inhabiting in the Parish. *Rex v. Salford*, H. 4 G. 3. B. S. C. No. 166.]

[And therefore his Children have no derivative Settlement under him in such Place. *Ibid.*]

[If the Purchase is 19*l.* tho' 15*l.* more is laid out on it, and it is taxed after the Rate of a 30*l.* Tenement. *Rex v. Duncburch*, H. 6 G. 3. B. S. C. No. 177.]

[The Office of Constable, if not presented at the Leet as the Custom has been. Executing; *Rex v. Winterbourn*, H. 4 G. 3. B. S. C. No. 167.]

[Or tho' sworn in at the Leet, if it appears that he does not serve on his own Account. *Rex v. Allcannings*, H. 9 G. 3. B. S. C. No. 196.]

[Nor by a Curate under a Sequestration: The Sequestration may be determined at any Time. *Rex v. Over*, T. 13 G. 3. B. S. C. No. 232.]

[By living forty Years, attending the Leet, amending the Highways, having a Habitation: Pew in Church, five Children, and doing Watch and Ward, if there is no Notice in Writing. *Aldenham v. Abbot's Langley*, H. 3 G. 2. Str. 853.]

[In an extraparochial Place consisting of two Houses, or of five Houses and Farms, if it has not the Reputation of a Vill, or has not Officers. *Denham v. Dalham*, H. 8 G. 2. Str. 1004. B. S. C. No. 11. *Stoke Prior v. Grafton*, P. 10 G. 2. Str. 1071. B. S. C. No. 31.]

[By living on a Freehold out of which one has a Rent Charge, or a Specific Legacy, much less where he has only an Annuity charged on Personal Part of which is a Leasehold. *Rex v. Stockley Pomeroy*, H. 14 G. 3. B. S. C. 237.]

[If there is not an Hiring for a Year, either expressly, or in Law. *Rex v. Hiring and Dedham*, M. 10 G. 3. B. S. C. No. 202. *Rex v. Bradninch*, H. 10 G. 3. B. Service. S. C. No. 206. *Rex v. Lowther*, H. 11 G. 3. B. S. C. No. 210. *Rex v. Clare*, M. 16 G. 3. B. S. C. No. 255.]

[Or, if there is not a reciprocal Engagement on the Servant to serve. *Ibid.*]

[By several Hirings and Services for eleven Months each to the same Person, with only a Week intervening. *Rex v. Haughton*, H. 4 G. Str. 83.]

[By a Year's Service, if two Days be on liking before the Hiring. *Coombe v. Westwoodbay*, H. 5 G. Str. 143. *Rex v. Ilam*, M. 25 G. 2. B. S. C. No. 109.]

[By Service from the Fair after Michaelmas to Michaelmas. *Rex v. Westwoodbay*, *Ibid.* T. 4 G. 2. Fort. 393. *Rex v. Newton*, M. 14 G. 2. B. S. C. No. 55.]

By

[By hiring for a Year, and serving eleven Months, tho' he had been a weekly Servant for some Time before; for two Services not *ejusdem generis* cannot be coupled together. *Rex v. Wrington*, M. 22 G. 2. B. S. C. No. 98.]

[If the Servant goes away twelve Days before the Expiration, tho' with his Master's Consent, and he has his whole Wages. *Seaford v. Castle Church*, M. 9 G. 2. Str. 1022. B. S. C. No. 20.]

[If the Servant is hired for a Year, with Liberty to be absent the Harvest-Month, and is accordingly absent. *Rex v. Bishop's Hatfield*, H. 31 G. 2. B. S. C. No. 141.]

[Or with Liberty to be absent eleven or twelve Days in Sheep-shearing Time, tho' sometimes refused, and sometimes he worked for his Master during that Time. *Rex v. Empingham*, M. 15 G. 3. B. S. C. No. 246.]

[If the Servant was a Parish-Apprentice, and discharged by his Master with his own Consent, but without the Consent of the Parish-Officers; he being under Age at the Time of the Discharge, and no explicit Leave to a particular Service. *Rex v. Austrey*, H. 31 G. 2. B. S. C. No. 142.]

[If the Servant is hired for three Years, to work eleven Hours a Day on the six working Days, and all the rest of the Time and Sundays to be his own Master. *Rex v. Macclesfield*, P. 31 G. 2. B. S. C. No. 146.]

[If the first Contract for a Year is dissolved, it cannot be connected with a subsequent Service. *Rex v. Caverswell*, P. 31 G. 2. B. S. C. No. 147. *Rex v. Ross*, T. 11 G. 3. B. S. C. No. 215.]

[If a Boy of eight Years old is taken in out of Charity, and no Wages or Contract, and serves six Years; for a Contract in such Case shall not be presumed. *Rex v. Weyhill*, H. 33 G. 2. B. S. C. No. 157.]

[If the Servant is hired to be paid by the Piece, deducting so much for Diet and Lodging; for it is not hiring for a Year. *Rex v. Saint Peter's Dorchester*, M. 4 G. 3. B. S. C. No. 165.]

[If the Exception, "to be at his own Liberty at all Times except usual working Hours," is Part of the Contract. *Rex v. Buckland Denham*, H. 12 G. 3. B. S. C. No. 218.]

[By Servant attending his Master to a Place of publick Resort (as Scarborough.) *Rex v. Alton*, P. 30 G. 2. B. S. C. No. 134.]

Marriage.

[If it is not solemnized according to Marriage-act, 26 G. 2. c. 33. as if the Man under Age, and not being a Widower, is married by Licence, without the Consent of his Father then living. *Rex v. Preston*, M. 33 G. 2. B. S. C. No. 154.]

Parentage.

[By Children in the Husband's Parish, if he has not lived with his Wife. *Saint Andrew's v. Saint Bride's*, P. 3 G. Str. 51.]

[By a Son grown up, who does not remove with his Father to another Parish. *Eastwoodbay v. Westwoodbay*, T. 7 G. Str. 438. *Saint Michael Norwich v. Saint Matthew Ipswich*, P. 2 G. 2. Str. 831. *Rex v. Bugden*, H. 21 G. 2. B. S. C. No. 93. *Rex v. Walpole Saint Peter's*, P. 9 G. 3. B. S. C. No. 197.]

[By the Children of a Woman by a former Husband, in her second Husband's Settlement. *Rex v. Saint Giles in the Fields*, T. 6 & 7 G. 2. B. S. C. No. 2.]

[By Children in the Place where their Father purchased less than 30 l. tho' he cannot be removed. *Rex v. Salford*, H. 4 G. 3. B. S. C. No. 166.]

Renting.

[The Pasture of a Piece of Ground of 10 l. per Annum. *Rex v. Minchin Hampton*, T. 4 G. 2. Str. 874.]

[A House at 10 l. per Annum, with Covenants to make Additions to make it worth that Rent which it was not before, and these Covenants not performed. *Southwold v. Yoxford*, H. 13 G. 2. Str. 1127. B. S. C. No. 47.]

[A Tenement of 16 l. per Annum jointly between two Persons, tho' it had been let at 20 l. *Rex v. Marden*, M. 25 G. 2. B. S. C. No. 111.]

[A Messuage, &c. and Feeding for sixteen Cows on Lands specified, tho' the Rent above 10 *l.* for it is not a Tenement. *Rex v. Lockerly*, *H. 25 G. 2. B. S. C. No. 113.*]

[A Tenement of 8 *l. per Annum*, and being Joint-tenant for 3 *l. 15 s.* and to pay 4 *s.* for some Privileges. *Rex v. Kniveton*, *P. 33 G. 2. B. S. C. No. 159.*]

[A Farm of 44 *l.* for a Year, and living there three Weeks, and then under a new Agreement living in Part of the Premises not under Lease, for a Year, nor of 10 *l.* Value; for the one cannot be tacked to the other. *Rex v. Delwyn*, *T. 8 & 9 G. 2. B. S. C. No. 16.*]

[If he is not rated, tho' he pays. *Rex v. Sarrat*, *M. 9 G. 2. B. S. C. No. 21.* *Rex v. Bramshaw*, *M. 10 G. 2. B. S. C. No. 29.* *Rex v. Lower Walton*, *H. 10 G. 2. B. S. C. No. 30.* *Rex v. Stanlake*, *M. 9 G. 2. B. S. C. No. 192.* *Rex v. Saint Cuthbert*, *T. 15 G. 3. B. S. C. No. 254.*]

[If a Man's Name is inserted in a Rate but no Sum set against it when made, but next Year a Sum inserted by Churchwarden, and the Money paid. No Settlement. *Rex v. Warblington*, *T. 14 G. 3. B. S. C. No. 245.*]

[If the Land-tax Assessment expresses that the Landlord is rated for Lands in the Occupation of *A.* tho' *A.* pays and is not repaid, he gains no Settlement. *Rex v. Carshalton*, *P. 15 G. 3. B. S. C. 252.*]

The Workmen in a Dock-yard (as *Sbeernefs*) gain no Settlement in virtue of the Money stopt out of their Wages for the Support of the Poor of that Ville, for it is not a publick Rate or Levy. *Rex v. Friendsbury*, *T. 9 G. 3. B. S. C. No. 199.*

The proper Way for a Removal is to make a Record of the Complaint, and an Adjudication, and then grant a Warrant for removing, and return the Record to the Sessions. *1 Sal. 406.* (B. 73.)
Order of Removal.

If the Order of the two Justices does not pursue the Statute, it shall be quashed in *B. R.* As, if it does not shew, that one of the Justices was of the *Quorum*. *R. Sal. 473, 475, 481.*

Or, that the Party removed was in Danger of being chargeable. *R. Sal. 485, 491. Mod. Ca. 163. Vide Ante, (B. 72.)*

Or, that Complaint was made by the Officers of the Parish. *R. 5 Mod. 149. Sal. 492.*

Or, that the Place to which he is removed was his last Settlement. *Vide Sal. 478, 9.*

Or, that the Order was made by Justices of the County. *R. Sal. 474.*

Or, that the Examination, as well as the Order, was by two Justices. *R. Sal. 488.*

Or, if the Order be to the Officers of *D.* whither he is removed, to remove him. *R. Sal. 493.*

If there be an Order to remove him to *B.* and afterwards *B.* removes him to *C.* without Appeal; that admits him settled at *B.* and they cannot remove him to *C.* but upon a subsequent Settlement. *R. in B. R. P. 12 W. 3. Semb. Sal. 481, 488.*

But a subsequent Settlement shall be intended where it can. *R. Sal. 489, 492.*

If an Order to send him to *B.* be affirmed upon Appeal, they cannot remove him. *R. Sal. 524, 488, 492, 527.*

If an Order be uncertain, it will be quashed: As, to remove *A. and his Family*. *R. Sal. 482, 485.*

Or, *A. and his Children*. *Comyns's Rep. 86. R. Sal. 488.*

If it does not mention the Ages of the Children. *2 Mod. Ca. 337.*

If there be no Adjudication of the Settlement: As, if it says, *as informed*. *R. Sal. 473, 490.*

Or, *Whereas Oath hath been made*. *R. Sal. 478.*

On Complaint, that A. was the last Settlement. *R. Sal. 479.*

So it cannot be referred to the Opinion of *B. R.*—*R. Sal. 486.*

If the first Order be defective, it will not be made valid, by the Order upon Appeal. *R. Sal. 482, 608.*

Nor, by the Return of the *Certiorari*. *R. Sal. 493.*

But *B. R.* will not quash an Order nine Years afterwards. *5 Mod. 205.*

Nor, if the Order be, *that he endeavoured to settle there*, tho' it does not say, *in a Tenement under 10 l. per Annum*. *R. 5 Mod. 150. Sal. 493.*

Or, that it was *his Settlement*; for that is tantamount to *his last Settlement*. *Sal. 473.*

Or, does not say, that they are Justices of the Division; for that is only directory. *R. Sal. 473, 480.*

So, if an Order for sending to *B.* be reversed upon Appeal, that does not conclude to the sending to *D.* *R. Sal. 486, 492, 524.*

So another Parish may afterwards send to *B.* *R. Carth. 516.*

So an Order shall not be quash't, for not shewing the Cause of the Order. *R. Sal. 607. F.g. 254.*

[If the ordering Part is by two Justices, it is good, though the Complaint was only to one. *Rex v. Westwood, H. 4 G. Str. 73.*]

[To *A.* as the Place of his last legal Settlement; bad; there must be an Adjudication. *Ibid.*]

[Certificate-Man cannot be removed, because *likely* to become chargeable; he is not removeable till *actually* become chargeable. *Teelby v. Wellerton, H. 4 G. Str. 77. Rex v. Hacheston, H. 22 G. 2. B. S. C. No. 100. Rex v. Kingwood, P. 29 G. 2. B. S. C. No. 126.*]

[A Person cannot be removed, because he *may* become chargeable, it must be *likely*. *Ibid.*]

[Order to remove *A.* and his Family quashed as to the Family, as too general, but confirmed as to *A.* himself. That he is likely to become chargeable, and that *S.* was the Place of his last legal Settlement, well enough, on Authority of a former Case. *Beaston v. Sciffon, M. 5 G. Str. 114.*]

[*Likely to become chargeable*, is sufficient, without saying, *to the Parish from whence removed*. *Rex v. Witham, H. 5 G. Str. 142. Maidstone v. Dithing, M. 7 G. Str. 393. Rex v. Leofield, P. 12 G. Str. 698.*]

[*A.* and his Wife is come into your Parish, shall not vitiate Order; for it is not necessary to shew they came in, only that they endeavoured to settle. *Rex v. South Marston, T. 5 G. Str. 189.*]

[*B. R.* will not make Intendments to destroy an Order; so if the Order recites, that *A.* was hired, and served a Year, and gained no other Settlement before his Death, and therefore remove his Widow and her Children to that Parish; it is to be intended, that he was not married at the Hiring, and that her Children are by him, and not a former Husband. *Ratcliffe Culy v. Exell, M. 6 G. Str. 211.*]

[An Order of Reversal is final between the two Parishes only; if it be confirmed, it is final to all. *Little Bitbam v. Somerby, M. 6 G. Str. 232.*]

[In an Order to remove a Certificate-Man, it is not necessary to say he had gained no Settlement there during his Residence there. *Barleycroft v. Cole Overton, M. 7 G. Str. 402.*]

[If it says the Certificate was allowed according to the Act of Parliament, it need not say it was attested; for that is implied in it. *Ibid.*]

[Order of Removal must be final, and not conditional; and it must be positive, and not *we believe*. *Stallemberg v. Haney, H. 5 G. Fort. 323.*]

[If an Order to remove from *A.* to *B.* be quashed on Appeal on the Merits, and four Years after another Order to remove from *A.* to *B.* *B. R.* will not intend a new Settlement. *Capel v. West Pecham, M. 12 G. Fort. 327. S. P. Fosson v. Carlton, T. 9 G. Str. 567.*]

[One Order cannot remove two Persons on different Settlements. *Chewton v. Compton, M. 8 G. Str. 471.*]

[Adjudication of Husband's Settlement sufficient for Wife and Child. *Hoby v. Kingsbury, T. 8 G. Str. 527.*]

[An Order to remove a married Woman is good, if it does not appear that she is sent from her Husband. *Saint Michael v. Nunny*, H. 9 G. 2. Str. 544.]

[But she cannot be removed from her Husband, even tho' he has no Settlement in England. *Rex v. Carleton*, T. 15 G. 3. B. S. C. 3. No. 253.]

[A Bill of Exceptions does not lie to Orders concerning Settlements. *Rex v. Preston*, P. 9 G. 2. Str. 1040. B. R. H. 249. B. S. C. No. 24.]

[Where a Man and his Children are sent as *actually* settled, it is not necessary to set out the Ages of the Children; though where they are sent consequentially to the Father's Settlement, it is. *Heptonstall v. Evingdon*, T. 9 G. 2. Str. 1047.]

[The Examination of the Pauper must be by the two Justices who sign the Order. *Rex v. Wykes*, T. 11 G. 2. Str. 1092.]

[If two Justices make an Order in *January*, and in *April* one of them and another call in the Order, and make another to another Place, (pending an Appeal to the first,) which is afterwards confirmed at an adjourned Session, which does not say when the original Sessions were held, and therefore void; the first Order is good, and the others bad. *Rex v. Harrowby*, P. 10 G. 2. B. S. C. No. 32.]

[There must be either an express Adjudication, or a plain Reference, that the Pauper is likely to become chargeable to the Parish whence removed. *Rex v. Bourn*, P. 8 G. 2. B. S. C. No. 12. *Rex v. Ufculm*, M. 13 G. 2. B. S. C. No. 45. *Rex v. Netherton*, M. 13 G. 2. B. S. C. No. 46.]

[Adjudication that it was the last legal Settlement of a Wife and Daughter, is sufficient, without saying it was the Husband's; for the Wife could have no other. *Rex v. Higher Walton*, H. 14 G. 2. B. S. C. No. 57.]

[But the Adjudication is not sufficient, if it is only that *A.* was the Settlement of the Husband, though it does not appear that she is a Widow, if she is not removed as his Wife, nor the Children as *his* Children. There must be an Adjudication of the Settlement of the Children or of the Mother. *Rex v. Mansfield*, H. 9 G. 2. B. S. C. No. 23. *Rex v. Great Bedwin*, H. 8 G. 3. B. S. C. No. 188.]

[In Case of a Fraud, it must be expressly stated so; for else B. R. cannot take it to be so. *Rex v. Weston*, T. 14 & 15 G. 2. B. S. C. No. 59.]

[A Reference to the Name of the County in the Margin is sufficient. *Rex v. Bourn*, P. 8 G. 2. B. S. C. No. 12. *Rex v. Ufculm*, M. 13 G. 2. B. S. C. No. 45. *Rex v. Great Bedwin*, T. 13 & 14 G. 2. B. S. C. No. 58. *Rex v. Llanrbydd*, H. 10 G. 3. B. S. C. No. 204.]

[An Order of Removal submitted to, and not appealed from, is conclusive upon the non-appealing Parish as against all the World, (but not if it is given up by the Parish in whose Favour it is made, to save the Trouble of Appeal.) *Rex v. Berkswell*, M. 15 G. 2. B. S. C. No. 60. *Rex v. Sutton Saint Nicholas*, T. 21 & 22 G. 2. B. S. C. No. 96. *Rex v. Silchester*, H. 6 G. 3. B. S. C. No. 176. *Rex v. Llanrbydd*, H. 10 G. 3. B. S. C. No. 204.]

[And it is conclusive, not only as against another Parish, but even with another Township in the same Parish. *Rex v. Kirkby Stephen*, T. 10 G. 3. B. S. C. No. 207.]

[If the Adjudication is, that the Place is the Settlement of the Father, the Children's Ages must be set out; but if it be, that it is the Settlement of the Children themselves, they need not. *Rex v. Heptonstall*, T. 10 G. 2. B. S. C. No. 26. *Rex v. Ufculm*, M. 13 G. 2. B. S. C. No. 45. *Rex v. Bowling*, P. 15 G. 2. B. S. C. No. 63. *Rex v. Madley*, H. 16 G. 2. B. S. C. No. 70. *Rex v. Stanfield*, P. 16 G. 2. B. S. C. No. 2. *Rex v. Normanton*, P. 16 G. 2. B. S. C. No. 73.]

[If the original Order sets forth, that the Pauper is settled at *A.* where he lived as a hired Servant a Year, it is well enough, for it was unnecessary; but if it had been in a Session's Order for the Opinion of Court, it would have been bad, if it had not said, he was hired for a Year. *Rex v. Madley*, H. 16 G. 2. B. S. C. No. 70.]

[No

[No Person can be removed from a Parish where he has an Estate. *Rex v. Hasfeld*, P. 13 G. 2. Str. 1131. B. S. C. No. 49. And consequently a Wife or Child cannot be removed from the Man's Tenement as long as it remains his, though he is not there, and though his and their Settlement is at another Place. *Rex v. Leeds*, P. 4 G. 3. B. S. C. No. 169.]

[A Child is not intitled to remain with its Grandmother for Nurture, but may be removed from her to its Settlement, though she is liable to allow for its Maintenance. *Ibid.*]

[An Order to remove a Woman and her Children to her Husband's Settlement, is bad as to the Children, for they may be by another Man. *Rex v. Normanton*, P. 16 G. 2. B. S. C. No. 73.]

[The Order must shew, that the Justices have Jurisdiction; therefore, if no County is named in the Margin, and the two Parishes named are in different Counties, and the Justices stile themselves of the County *aforsaid*, it is bad; for it does not appear they were of the proper County. *Rex v. Stepney*, P. 8 G. 2. B. S. C. No. 8.]

[The Order must express, that one of the Justices is of the Quorum. *Rex v. Standish*, T. 13 & 14 G. 2. B. S. C. No. 50. *Waltbamdale v. Great Mitton*. One *whereof*, is good. And *whereof*, bad, for it is insensible. *Ibid.*]

[And it cannot be amended. *Rex v. Kay*, M. 11 G. 2. Andr. 67.]

[It must likewise shew, that Complaint was made; for without that they have no Jurisdiction. *Rex v. Hareby*, H. 12 G. 2. Andr. 361.]

[An Order must not be founded on an Examination transmitted from other Justices. *Rex v. Coln Saint Aldwins*, M. 13 G. 2. B. S. C. No. 44.]

[Both Justices ought to be present at the *viva voce* Examination of the Witnesses. *Ibid.* Sed Q. If they must be together, or if it is sufficient that each examines all the Witnesses and Evidence separately, before he makes the Order, which is a common Practice, where Justices live remote from each other.]

[Formerly, a Justice could not make an Order of Removal from a Parish where he was an Inhabitant and rated. *Rex v. Great Chart*, M. 16 G. 2. B. S. C. No. 68.]

[On Occasion of that Case was made the St. 16 G. 2. c. 18. which authorises Justices to act originally in Parishes where they are rated, but not on an Appeal.]

[A Servant cannot be removed from his Service. *Semb.* *Rex v. Ozleworth*, T. 24 & 25 G. 2. B. S. C. No. 108. Yet *Lee*, C. J. in *Rex v. Fittleworth*, M. 18 G. 2. B. S. C. No. 81. says, there is no Case to prove that Servants are not removeable during their Service, and that he should very much doubt it.]

[A Certificate-Man actually serving an annual Office may be removed on becoming actually chargeable. *Rex v. Fittleworth*, M. 18 G. 2. B. S. C. No. 81.]

[A Wife and Children may be removed without the Husband, to his Settlement, if they, and not he, are the Intruders. *Rex v. Ironacton*, M. 14 G. 2. B. S. C. No. 53.]

[Child of a Certificate-Person asking Relief for itself only, that only can be removed. *Semb. per Aston J.* *Rex v. Framlingham*, T. 13 G. 3. B. S. C. No. 233.]

[If a Parish lies in two Counties, A. and B. and there is no Overseer for the Part in A. but an Overseer for the Part in B. and Churchwarden for the whole Parish; a Person having gained Settlement in the Part in A. may be removed there, and delivered to the Churchwarden. *Rex v. Mereval*, H. 10 G. 3. B. S. C. No. 205.]

[An Adjudication that the Paupers have become chargeable, is good; for it imports the present Tenure, and adjudges that they are so at the Time of making the Order. *Rex v. Honiton*, P. 11 G. 3. B. S. C. No. 213.]

[If a Pauper is removed by Order from A. to B. B. gives Notice of Appeal, on which A. takes him back, and get their Order confirmed at Sessions nevertheless;

theless; and next Sessions set both aside as fraudulent; *B. R.* will quash the first Order as properly quashable, and will intend it was late served, as the Appeal was at next Sessions but one, and quash the Order of Confirmation, as not being on Appeal, and consequently without Jurisdiction; (*Q. de ceo & v. Rex v. Woodchester, M. 16 G. 2. B. S. C. No. 67.*) and will quash the latter Part of the second Sessions-Order, that rescinded the Confirmation, as not being properly before them. *Road v. North Bradley, T. 15 G. 2. Str. 1168.*]

[By Stat. 13 G. 3. c. 82. Woman and Child removed from Lying-in-Hospital to her Parish within twenty Miles, the Expence to be paid by that Parish.]

By the *St. 13 & 14 Car. 2. 12.* The Party aggrieved may appeal to the Justices of the County at the next Quarter Sessions. By the *St. 3 & 4 W. & Appeal. M. 11.* to the Justices of the Place whence removed. But by the *St. 8 & 9 W. 3. 30.* The Appeal shall be to the Justices of the County, Division, or Riding, and not elsewhere. *R. Sal. 490.*

An Order upon Appeal is final, tho' the Statute does not say so. *Per Cur' P. 4 W. & M.*

An Appeal *Ad Generalem Sessionem*, omitting, *Quarterialem*, is not good; *Per Holt.* But it shall be intended; *Per 2 J. P. 4 W. & M. Vide Carth. 222. R. Sal. 474, 476.* not to be good.

If an Order be repealed upon an Appeal, a Child born in the Parish to which it's Mother was removed by the Order, shall be sent with the Mother to the other Parish. *1 Sal. 121. 2 Sal. 474.*

After an Order confirmed upon an Appeal, if the Party goes to another Parish, he shall be removed upon an Original Order. *R. Sal. 481, 489.*

If an Order be quash't upon Appeal, it cannot be afterwards confirmed at the same Sessions; for the Court has executed it's Authority. *R. 5 Mod. 396. Cont. Sal 494. R. Cont. Sal. 607. (Vide Sal. 477. Comb. 418.)*

If there be an Appeal to the next Sessions, it may be adjourned to a subsequent one. *Sal. 605.*

An Order by the Sessions must appear to be, upon Appeal. *Sal. 479. Carth. 58.*

The Sessions cannot make an Order to another to determine, tho' by Consent. *R. Sal. 477.*

The Sessions upon an Appeal cannot send to a third Parish. *R. Sal 475.*

The Sessions cannot supersede an Order of two Justices; for they shall only quash, or affirm. *Sal. 472.*

By the *St. 8 & 9 W. 3. 30.* Justices of Peace at Quarter Sessions on an Appeal about a Settlement, or Proof of Notice of it by a proper Officer to the Churchwardens or Overseers, shall award such Costs as they think fit to him, for whom the Appeal went, or Notice was given: And if the Party to pay Costs live in another County, a Justice of Peace of that County, on Proof of a true Copy of such Order, shall by Warrant levy such Costs by Distress and Sale, &c. and for want of Distress, by Commitment for twenty Days to Prison.

[Two Justices may supersede their own Order of Removal of a Pauper, soon after the making, and reciting they were surprised. *Pancras v. Rumbald. Str. 6.*]

[An Order confirmed at Sessions, whether on Appeal or for want of Appeal, is conclusive as to all the World; and with respect to Children born afterwards, as well as the Parents. *Rex v. Cirencester, H. 8 G. 2. B. S. C. No. 6. Rex v. Woodchester, M. 16 G. 2. B. S. C. No. 67.*]

[If discharged or quashed on the Merits, (*secus* if quashed for want of Form,) it is conclusive between the two contending Parishes, but not as to others. *Ibid. Rex v. Bradenham, P. 29 G. 2. B. S. C. No. 127. Rex v. Bentley, P. 30 G. 2. B. S. C. No. 135.*]

[But this is to be understood only where the Circumstances remain the same, and not where any new Cause of Removal has arisen; as, if an Order to remove a Certificate-Man likely to become chargeable is quashed, yet he may be afterwards removed, if actually chargeable. *Ibid. Rex v. Osgathorpe, P. 19 G. 2. B. S. C. No. 89.*]

[A vagrant Pass-warrant unappealed from, has not the same Effect as an Order of Removal unappealed from. *Rex v. Stanfield*, P. 16 G. 2. B. S. C. No. 72. *Rex v. Upmerden*, P. 16 G. 2. B. S. C. No. 74.]

[Appeal to Quarter-Sessions does not lie from a Vagrant-pass. *Rex v. Ring-would*, T. 16 G. 3. B. S. C. No. 263.]

[If an Order is quashed on Appeal, it is not necessary to say, at the Appeal of the Party grieved. *Rex v. Almanbury*, T. 4 G. Str. 96. Fort. 301.]

[If an Order of Removal of two Justices (*Quorum unus*) be quashed by an Order of Sessions, reciting that they had perused the Charter of A. and it did not appear *thereby* that either of the two Justices were of the *Quorum*, and therefore, &c. the Order of Sessions shall be quashed, for the want of Jurisdiction is not sufficiently averred; the Justices might have it, though it did not appear by the Charter of A. *Albrighton v. Skipton*, P. 6 G. Str. 300.]

[The Sessions may appoint what Notice shall be given upon Appeals, and dismiss Appeal for want of it. *Anon.* T. 6 G. Str. 315.]

[The Appeal must be at the next Sessions after the Removal, not after the Date of the Order. *Rex v. Norton*, P. 2 G. 2. Str. 831.]

[Where there is a general Order of two Justices good on the Face of it, and the Party appeals to the Sessions, and they make an Order specially, stating the Case, the Court will take the special Case to be the Foundation of the first Order, and determine on it accordingly. *Rex v. Reading*, M. 8 G. 2. B. R. H. 79.]

[The Court will take Notice of Facts stated in an Order of Sessions, though the Order be bad. *Ibid.*]

[The Sessions may, by Stat. 5 G. 2. c. 19. amend Defects in Form, but not in Substance, nor any Thing that requires Examination. *Rex v. Great Bedwin*, T. 13 & 14 G. 2. B. S. C. No. 58.]

[Thus, if it is not said, that one of the Justices is of the *Quorum*, or that it is on the Complaint of the Overseers, or that the Pauper (a Certificate-Man) is become actually chargeable, it cannot be amended. *Ibid.*]

[An Appeal must be continued by Adjournment, notwithstanding a conditional Reference to the next Judge of Assize, or the Sessions cannot take it up again. *Rex v. Hedingham Seible*, M. 11 G. 2. B. S. C. No. 35.]

[If an Order is made at an Adjournment, it must set forth when the original Sessions were holden. *Rex v. Heptonstall*, T. 10 G. 2. B. S. C. No. 26.]

[The Sessions is not obliged to state a Case specially; nor will the Court of B. R. send a general Order of Sessions back to have the Case more fully stated, nor order the Return to be amended, by inserting the State of the Case; nor does a Bill of Exceptions lie. *Rex v. Oulton*, M. 9 G. 2. B. S. C. No. 19. *Rex v. Pneston*, P. 9 G. 2. B. S. C. No. 24. *Rex v. Normanton*, P. 16 G. 2. B. S. C. No. 73. *Rex v. Mayfield*, H. 31 G. 2. B. S. C. No. 144.]

[Nor a special Order without Consent. *Rex v. Wyke*, T. 19 & 20 G. 2. B. S. C. No. 90.]

[But the Court will, by Consent of both Sides, quash all the Orders for Insufficiency, in order to have the Case more fully stated. *Rex v. Himley*, M. 11 G. 2. B. S. C. No. 36.]

[The Sessions should state the Fact, and not the Evidence of the Fact. *Rex v. Martley*, T. 11 & 12 G. 2. B. S. C. No. 38.]

[If the original Order is for A. B. his Wife, and C. and D. their Children, and the Sessions quash it as to the said B. and the said Children (omitting *his Wife*, and *their Children*), B. R. will send it back to be more fully stated. *Rex v. Cuckfield*, P. 22 G. 2. B. S. C. No. 103.]

[And if it appears likely, that there is a Mistake or Omission in stating the Case, the Court will send it back to be amended, notwithstanding the most vehement Opposition. *Rex v. Hitcham*, H. 33 G. 2. B. S. C. No. 156.]

[And if the Order amended on new Evidence be affirmed, yet the Recognizance shall be discharged. *Rex v. Hitcham*, T. 33 & 34 G. 2. B. S. C. No. 161.]

[If two Justices remove a Man to A. the Order of Sessions quashing it is good, tho' it states that he lived there, if it does not say he was settled there,

and though it states that he came afterwards to B. where he did not afterwards gain a Settlement, but had a derivative one there before; for they do not give his going to B. as a Reason. *Rex v. Lower Swell, M. 31 G. 2. B. S. C. No. 140.*

[An Appeal from an Order of Removal made by Borough-Justices must be to the Quarter-Sessions of the County; for the Quarter-Sessions of a Borough have no Jurisdiction in it. *Rex v. East Donyland, T. 8 G. 3. B. S. C. No. 191.*]

[The Sessions may state, that it appears to them that a Person was bound Apprentice, though the Indenture is not produced to them. *Rex v. East Knoyle, T. 13 & 14 G. 2. B. S. C. No. 51.*]

[Sessions cannot order Costs of maintaining Pauper to attend the Event of a Cause. *Rex v. Great Chart, M. 16 G. 2. B. S. C. No. 68.*]

[If the Facts are not sufficiently stated, B. R. will affirm the Order. *Rex v. Saint George Hanover-square, T. 21 & 22 G. 2. B. S. C. No. 97.*]

[The Sessions, on stating a special Case, must determine whether a Marriage was by a Clergyman or not; if they do not, the Order will be quashed for such imperfect State. *Rex v. Luffington, P. 17 G. 2. B. S. C. No. 79.*]

[When the Expression is not clear, they shall be intended to have done Right. *Rex v. Mayfield, H. 31 G. 2. B. S. C. No. 144.*]

[If both Parties agree to refer the Matter to the Opinion of the Judge of Assize, B. R. will not enter into it. *Rex v. Natland, M. 15 G. 3. B. S. C. No. 247.*]

[Sessions Cases must be set down in the Crown Paper, and Copy of Order left with junior Judge two Days before Argument. *General Rule, Hil. 15 G. 3.*]

By the *St. 13 & 14 Car. 2. 12.* If the Person removed, &c. refuse to go, or come back of his own accord to the Parish, any Justice of Peace may send him to the House of Correction: And if the Churchwardens and Overseers of the Parish, to which he is sent, refuse to receive and provide for him, any Justice of Peace may bind them to the Quarter Sessions or Assises, there to be indicted for Contempt. (B. 75.)
Officer or
Party re-
fusing, &c.

By the *St. 3 & 4 W. & M. 11.* Churchwardens and Overseers refusing to receive him, &c. on Proof by two Witnesses before a Justice of Peace of the County, &c. to which sent, forfeit 5 *l.* to the Poor of the Parish whence removed, to be levied by Distress and Sale, and for want of Distress by Commitment for forty Days.

(B. 76.) Vagabonds, &c.

By the *St. 39 El. 4.* (whereby all former Statutes for Punishment of Rogues, &c. are repealed); (1.) All Persons calling themselves Scholars, going about begging; (2.) All Seafaring Men pretending Losses at Sea; (3.) All idle Persons, begging, using unlawful Games or Plays, or pretending Palmistry, Fortune-telling; (4.) All Proctors, Procurers, Patent-Gatherers or Collectors for Gaols, or Hospital; (5.) All Fencers, Bearwards, Players of Interludes wandering, unless authorised by a Peer*; (6.) All Juglers, Tinkers, Pedlars, and Petty Chapmen wandering; (7.) All Wanderers able to work, and refusing to work at the Wages usual in those Parts, and not having to maintain themselves; (8.) All out of Gaol begging for Fees, or otherwise; (9.) All wandering and begging, pretending Losses by Fire, or otherwise; (10.) All wandering, (not Felons,) pretending to be Egyptians, or in their Habit or Attire, shall be deemed Rogues, Vagabonds, and sturdy Beggars, and punished as such. (B. 76.)
Who are.
Vide the *St.*
12 Ann 23.

By the *St. 5 El. 4.* A Servant taken with a counterfeit Testimonial shall be whipt as a Vagabond.

So, by the *St. 43 El. 3.* A Soldier, or Mariner, begging, or counterfeiting a Certificate.

By the *St. 1 Jac. 7.* All Glas-men wandering, (tho' by the *St. 39 El. 4.* if licensed by three Justices, and not begging, they were excused,) shall be deemed Rogues:

JUSTICES OF PEACE.

Rogues: And no Authority from a Peer shall excuse any Person from the Punishment of Rogues.

By the *St. 7 Jac. 4.* Persons able to work, who run away and leave their Families to the Parish, shall be deemed and punished as incorrigible Rogues: And if any such threaten to run away, on Proof by two Witnesses on Oath before two Justices of the Division, unless he or she find Surety to discharge the Parish, shall be sent to the House of Correction, and dealt with as a Rogue, and not delivered till the next Meeting of the Justices, or the Quarter Sessions.

By the *St. 13 & 14 Car. 2. 12.* A Person sent by two Justices of Peace to his Place of Settlement, and returning of his own Accord, any Justice of Peace may send him to the House of Correction to be punished as a Vagabond.

A Person, who travels within his own County, to sell Wares in private Houses out of Fairs and Markets, is a Vagrant Pedlar within the *St. 39 El. R. 2 Cro. 577. 2 Rol. 172.*

If he wander, tho' he be not taken wandering. *2 Rol. 172.*

[By *St. 17 G. 2. c. 5.* Idle and disorderly Persons are,]

[All who threaten to run away, and leave their Wives or Children to the Parish—Who unlawfully return to the Place whence removed by Order of Justices, without bringing Certificate from their own Parish—Who, not having wherewith to maintain themselves, live idle, and refuse to work for the common Wages of the Place—Who go about begging, or gathering Alms in the Place where they dwell.]

[By *§. 2.* Rogues and Vagabonds are,]

[All who go about as Patent-gatherers, or Gatherers of Alms, under Pretence of Loss—Who go about as Collectors for Prisons—Fencers and Bear-wards—Common Players of Interludes—Who for Gain represent any Stage-Entertainment, not being authorized by Law—Minstrels, Jugglers—Persons pretending to be Gypsies, or wandering in the Form of *Egyptians*, or pretending to have Skill in Physiognomy, Palmistry, or like crafty Science, or pretending to tell Fortunes; or using any subtil Craft to deceive and impose on any of his Majesty's Subjects, or playing or betting at unlawful Games or Plays—Who run away and leave their Wives and Children, whereby they become chargeable to any Place—Petty Chapmen wandering abroad, not licenced or otherwise authorized by Law—Persons wandering abroad, lodging in Alehouses, Barns, Out-houses, or the open Air, not giving good Account of themselves—Persons wandering abroad and begging, pretending to be Soldiers, Mariners, Seafaring-men, or pretending to go to work in Harvest—Other Persons wandering abroad and begging.]

[By *§. 1.* Persons apprehended begging in their own Parish, and resisting or escaping, are liable to the same Punishment as Rogues and Vagabonds.]

[*§. 3.* Except Soldiers, with Certificate from their Officers, or the Secretary at War, and Mariners and Seafaring-men with Writing under Hand and Seal of Justice, mentioning the Time and Place of Landing or Discharge, the Place to which such Soldier or Mariner is to pass, the Names of the chief Places thro' which, and Time of their Passage, while they continue in the direct Way, and during the Time; or Persons going to work in Harvest, with a Certificate signed by the Minister and Churchwarden, or Overseer of the Place they inhabit, declaring they have a Dwelling there.]

[By *§. 4.* Incorrigible Rogues are,]

[All End-gatherers, offending against *Stat. 13 G. 1. c. 23.* being convicted of such Offence—Persons apprehended as Rogues and Vagabonds escaping, or refusing to go before a Justice, or to be examined before him, or to be conveyed by a Pass after-mentioned, or knowingly giving false Account of themselves on such Examination, after Warning given them of their Punishment—Rogues and Vagabonds escaping from House of Correction before the Term for which committed is expired—Persons punished as Rogues and Vagabonds, and discharged, committing any of the said Offences.]

[A Soldier who leaves his Wife and Children chargeable, and is himself billeted in another Parish, is not a Rogue and Vagabond within this Act; therefore,

fore, if committed as such, must be discharged on *Habeas Corpus*. (*Soldier's Case*, T. 25 & 26 G. 2. 1 *Wils.* 331.)

[2. Whether he may not be come at by an Order of Session to allow so much to maintain his Children, under 43 *Eliz.* c. 2. *ff.* 7.]

[Whether a Wife removed with her Husband, and returning with her Husband to the Parish whence removed, can be committed with her Husband? 2. Mr. Norton had Certificates that it was the Practice; Mr. Clayton had known Children committed. *Baldwin v. Blackmore*, P. 31 G. 2. 1 *B. M.* 595.]

[A Commitment of a Person so returning to the House of Correction till discharged by due Course of Law, is illegal; by 13 & 14 C. 2. c. 12. it must be, to the House of Correction, there to be punished as a Vagabond; or, to a publick Workhouse, there to be employed in Work and Labour: And by 17 G. 2. c. 5. it must be to the House of Correction, there to be kept to hard Labour for any Time not exceeding one Month. *Ibid.*]

[The Justice ought to convict, before he commit. *Semb.* *Ibid.*]

[By Stat. 25 G. 2. c. 36. Every Place for publick Dancing, Musick, &c. within twenty Miles of London, unlicensed by four Justices at Michaelmas Quarter-Session, is a disorderly House or Place, and Constable with Warrant may seize Persons there, to be dealt with according to Law.]

[Licensed House shall have Inscription, *Licensed*, &c. and not open till five Afternoon.]

[Person behaving as Master or Mistress, or as having the Care, Government or Management of a Bawdy-house, Gaming-house, or disorderly House, shall be deemed the Keeper thereof.]

But by the *St.* 5 *El.* 4. Persons, having no Harvest in their own Town or County, may repair, having a Testimonial from a Justice of Peace of the same Place, to another Town or County, only for Hay or Harvest Work. (B. 77.) Who not.

By the *St.* 39 *El.* 4. Person travelling, without begging, by Licence of two Justices of Peace of the County where he dwells, and Provision sufficient for the Time limited by such Licence for his Travel, Stay, and Return, may go to the Bath, or to Buxton.

And Sea-faring Man, suffering Shipwreck and wanting Relief, and having a Testimonial of a Justice of Peace, shewing the Place and Time of his Landing, the Place of his Birth or Dwelling, and the Time for his Passage thither, may within that Time beg in his direct Way home.

And Children under seven Years old shall not be adjudged Vagabonds.

[Child under fourteen cannot be removed as a Vagabond, by Stat. 12 *Ann.* c. 23. *Rex v. King's Langley*, T. 11 G. Fort. 323. *Str.* 631.]

By the *St.* 39 *El.* 17. A Soldier or Mariner, having Licence from a Justice of Peace, may ask Relief in his direct Way home, during the Time of his Licence.

By the *St.* 39 *El.* 4. A Rogue taken shall by a Justice of Peace or Constable's Appointment, (or by the Headborough with Advice of the Minister and one other of the Parish,) be stripped to the Middle, and openly whipped till bloody: And then with a Testimonial under Hand and Seal of the Justice of Peace, Constable, Headborough, and Minister, or two of them, of the Day and Place when punished, whither sent, and in what Time (which the Minister shall register on Pain of 5 s.) shall be conveyed from Parish to Parish, by the Officer of the same, the next Way to the Parish where born, or if not known, to the Parish where he last dwelt for a Year, or if neither known, where he last past without Punishment, thence to be sent to the House of Correction or Gaol, there to be set on work till he get a yearly Service, or, if unable to work, till put into an Alms-house. (B. 78.) Punishment of a Rogue.

And if the Rogue prove dangerous, or will not be reformed, two Justices (1 *Quorum*,) may commit him to the House of Correction or Gaol, till the next Quarter Sessions, and then, if not thought fit to be delivered, the Court may banish him, to be conveyed at the Charge of the County to a Place, which six of the Privy Council, (whereof the Lord Chancellor, Keeper, or Treasurer to

be one,) shall appoint, or may adjudge him perpetually to the Gallies; and if being banished he return, he shall be a Felon.

But by the *St. 1 Jac. 7.* The Quarter Sessions shall brand him with R on the left Shoulder, and send him to the Place of his Dwelling, or if not known, to the Place where he last dwelt for a Year, or if neither known, to the Place of his Birth, to be set to Work; and if after he offend, he shall be adjudged a Felon.

By the *St. 39 El. 4.* Justices of Peace for a County shall not meddle in a Borough, &c. but the Justices of Peace, Mayor, &c. of such Town, shall execute this Statute against Vagabonds and Rogues.

And if a Rogue come from *Scotland, Ireland, or the Isle of Man*, after Punishment *ut supra*, he shall be conveyed to the Port or Parish where he first came, and then, at the Charge of the County, be transported to the Place whence he came.

By the *St. 7 Jac. 4.* Justices of Peace shall meet twice a Year at least, and four or five Days before, issue Warrants to the Constables to make a general Privy Search in one Night, in their several Towns, for Rogues, &c. and to bring them to such Meeting to be examined and punished.

By the *St. 13 & 14 Car. 2. 12.* Justices of Peace at the Quarter Sessions may cause Rogues adjudged incorrigible, to be transported to the *English Plantations* beyond Sea.

By the *St. 11 & 12 W. 3. 18.* (Continued by the *St. 1 Ann. 13.* and *5 Ann. 32.*) If a Vagabond, &c. be brought to a Constable with a Pass, &c. he shall be conveyed to the next Justice of Peace, who if he deserve Punishment shall send him to the House of Correction; if not, shall order him to be conveyed to such Town of the next County, thro' which he is to pass, as he thinks proper: And the Justice of Peace shall give the Constable a Certificate of whom he is to convey, and in what Manner, and indorse what he shall have for his Expence and Trouble, which the High Constable shall pay, and discount with the Treas-

[*Vide the *St. 12 Ann. 23.* throughout.]

A Rogue shall be whipt, and sent to the Place where he affirms his Birth, or Settlement; but was not to be sent to the House of Correction till the *St. 11 & 12 W. 3. 18. 2 Bul. 358. R. Lamb. 205. l. 2. c. 7. sect. 1, 2.*

But if he names his Birth, or Settlement to be where it was not, he shall be sent as an incorrigible Rogue to the House of Correction. *R. Lamb. 205, 206. l. 2. c. 7. sect. 1, 2.*

Children under seven Years of Age go with the Parent Vagrant to the Place of his Birth, or Settlement, or where he passed without Punishment. *R. Lamb. 206, 207. l. 2. c. 7. sect. 4, 6.*

And at the Place, where he passed without Punishment, the Children shall be relieved with the Labour of the Parent in the House of Correction; but the Children shall not be sent thither. *R. Lamb. 206, 207. l. 2. c. 7. sect. 6.*

If the Parent dies where the Children attain the Age of seven Years, they shall not be afterwards removed. *R. Lamb. 206. l. 2. c. 7. sect. 4.*

But if a Man has a Dwelling, he shall be sent thither. *R. Lamb. 206. l. 2. c. 7. sect. 3.*

And a Wife and Children being Vagrants shall be sent to the Father, tho' he be only a Servant. *R. Lamb. 206. l. 2. c. 7. sect. 4, 5.*

[One Justice cannot make an Order to remove a Vagrant to his Settlement, tho' he can make a pass to pass him as a Vagrant. *Bamber v. Hanington, 2 Ld. Raym. 1360.*]

[A Person must be idle, as well as disorderly, to be committed for a Vagrant. *Rex v. Miller, M. 12 G. 2. Str. 1103.*]

[By Stat. 14 G. 2. c. 33. §. 3. A Justice may send a Vagabond to the most convenient House of Correction in the County where he dwells.]

[By Stat. 17 G. 2. c. 5. §. 1. An idle and disorderly Person may be committed to hard Labour for a Month, by one Justice.]

[By §. 6. The Justices, or two of them, shall four Times a Year (or oftner if need be) meet in their Divisions, and order a general privy Search in one Night thro' their Limits, for Rogues and Vagabonds; and every Justice, on Information that such are in any Place, shall order Search; and being apprehended

hended, they shall be brought before a Justice, who, by §. 7. shall examine all Vagrants brought before him on Oath, as to their Condition and Settlement, and put it in Writing, and transmit to next Quarter-Sessions; and such Justice shall order such Persons to be publickly whipped, or send them to the House of Correction till next Quarter-Sessions, or a less Time; and may after such Whipping or Confinement, pass them to their last Settlement or Place of Birth; or, if under fourteen, and have Father or Mother, to their Place of Abode, to be delivered to a Parish-Officer; and by §. 8. shall transmit a Duplicate of the Pass with the Examination, to the Quarter-Sessions, and send a Duplicate of the Examination annexed to the Pass.]

[By §. 9. The Sessions may order Rogue and Vagabond to be kept in House of Correction to hard Labour six Months longer, and incorrigible Rogue not more than two Years, or less than six Months longer, and to be whipt in Manner, Times and Places, as they think fit, and then to be passed as aforementioned, or sent, if a Male above twelve, to serve his Majesty by Sea or Land; and if incorrigible Rogue, so ordered to be detained, makes his Escape, or offend again in like Manner, he shall be guilty of Felony, and transported for seven Years.]

[By §. 10. The Justice, with the Pass, shall give a Certificate directing how such Person is to be conveyed, and what Allowance the Officer is to have for conveying him.]

[By §. 11. The Constable shall carry the Vagrant by the next direct Way to the Place where sent, if in the same County or Division where apprehended, if in another (having separate Quarter-Sessions) then he shall deliver him to the Constable of the first Place in the next County, in the direct Way to the Place, with the Pass and Duplicate of Examination, taking Receipt; and he shall apply to a Justice, who shall make a like Certificate; and so on, till he is delivered to the Churchwarden of the Place where sent, with the Pass and Duplicate of Examination; and if he thinks the Examination false, he may carry him before a Justice, who may, on Cause, commit him till next Quarter-Sessions, who may, on Cause, deal with him as incorrigible Rogue; but he shall not be removed but by Order of two Justices, as other Paupers to their Settlements.]

[And ruled accordingly. *Rex v. Ringwould*, T. 16 G. 3. B. S. C. No. 263.]

[By §. 12. Vagrants shall pay for their Passage, if able.]

[By §. 13. Constables in northern Counties are to deliver the Examination of Scotch Vagrant to the Clerk of the Peace, and carry the Vagrant and Pass to the next Place in Scotland, and if the Vagrant afterwards be found wandering, begging or misbehaving in England, he shall be punished as incorrigible Rogue.]

[By §. 14 & 15. Masters of Ships bound for Ireland, Isle of Man, Jersey, Guernsey, or Scilly, shall by Justice's Warrant take on Board one Vagrant for every twenty Ton Burthen, and land them at the Place they arrive at, on Penalty of 5*l*.]

[By §. 16. Quarter-Sessions shall appoint Rates for passing Vagrants, and make Regulations therein.]

[By §. 17. High-Constable shall pay to petty Constable the Rates allowed him for passing Vagrants, on Penalty of Distress for the Sum allowed, and Satisfaction to Petty-Constable for his Trouble.]

[By §. 18. Officer counterfeiting or altering Certificate, forfeits 50*l*. not conveying or delivering, or receiving, or giving Receipt for Vagrant, forfeits 20*l*. both to be levied by Distress.]

[By §. 19.] The Place to which Vagrant is passed shall set him at work; if he refuse to work, shall carry him before a Justice, to be committed to hard Labour.]

[By §. 22. Officers not doing their Duty, and others obstructing the Execution of this Act, forfeit from 5*l*. to 10*l*. to be levied by Distress, by Order of one Justice.]

[By §. 27. This Act is not to alter the Method in Places where there are Directions by particular Statutes.]

[By

[By *ff.* 28. Offenders committed, whose Settlements cannot be found, shall be detained in House of Correction, till they can provide for themselves, or be placed by Sessions as Servants, Apprentices, Soldiers, Mariners, or otherwise, in England or America.]

[Warrant to commit a Pauper for returning to the Town whence removed, to remain till discharged by due Course of Law, is bad; for if under 13 & 14 Car. 2. it must be, if to the House of Correction, there to be punished as a Vagabond; if to a publick Workhouse, there to be employed in Work and Labour; if under 17 G. 2. it must be, there to be kept to hard Labour for—(any Time not exceeding a Month.) *Baldwin v. Blackmore*, P. 31 G. 2. 1 B. M. 596.]

[Whether Wife or Child returning with Husband or Father may be committed? Q. *Ibid.*]

[The Quarter-Sessions have a Jurisdiction to examine into the Accounts of Constables, and make Deductions. *Rex v. Earle*, T. 1 G. 3. 2 B. M. 1197.]

[A Commitment of a Rogue and Vagabond leaving his Family on the Parish, must alledge they are chargeable to the Parish. *Rex v. Hall*, H. 5 G. 3. 3 B. M. 1636.]

[If he is committed till discharged according to Law and Custom, it is bad; it must be till the Sessions, or for a less (specified) Time. *Ibid.*]

[Whether formal Conviction is necessary? Q. *Ibid.*]

[By Stat. 25 G. 2. c. 36. Constable, on Notice in Writing from two Inhabitants, paying Scot and Lot, of Person keeping Bawdy-house, Gaming-house, or Disorderly-house, shall go with them to a Justice, and on their swearing their Belief of Notice, and entering into Recognizance of 20*l.* to give material Evidence, Constable shall enter into Recognizance of 30*l.* to prosecute at next Sessions or Assize. He shall be allowed Expences, to be settled by two Justices, and paid by the Overseers; and if Party convicted, Overseers shall pay each of said Inhabitants 10*l.* on Pain of forfeiting double.]

[Justice shall bring Party accused before him, and bind him over to appear; and may take Security for good Behaviour in the mean Time.]

[Constable neglecting his Duty herein forfeits 20*l.*]

[Justice may examine any Person brought before him, and charged as Vagrant, or with Suspicion of Felony, as to his Settlement, and also Way of living; the Examination to be signed by Justice and Party, and transmitted to next Quarter-Sessions; and if not satisfactory, and the Party does not give Security to appear, Justice may commit him for six Days, make Overseers advertise him, and Time of Re-examination, and then discharge, or deal according to Law.]

(B. 79.)
Neglect to
apprehend.
In a Constable,
&c.

By the St. 39 El. 4. A Constable, &c. not doing his best Endeavour, for the Apprehension of Rogues, &c. in his Parish; and for Punishment and Conveyance of them, forfeits 10*l.* (And by the St. 1 Jac. 7. 20*l.*) upon Conviction by Confession of two Witnesses, before two Justices of Peace, to be levied by Distress and Sale to the Use of the Poor, or of the House of Correction at the Discretion of the Justices of Peace.

By the St. 7 Jac. 4. Constables shall give Account on Oath in Writing, under the Hand of the Minister, to the Justices of Peace at their two Meetings, of what Rogues they have taken on their privy Search, or otherwise, and how many they have punished, or sent to the House of Correction; and for Neglect, or for not safely conveying those sent by the Justices of Peace's Warrant, to the House of Correction, shall forfeit what the Justices of Peace think meet, not exceeding 40*s.* for every Offence.

By the St. 11 & 12 W. 3. 18. A Constable neglecting to apprehend a Rogue, or being negligent in his Duty, forfeits 20*s.* a fourth Part to the Informer, three Parts to the Poor, to be levied on Oath of one Witness, on Warrant of a Justice of Peace, by Distress and Sale.

If an Officer refuse a Rogue sent to the Parish, he shall forfeit 5*l.* R. Lamb. 208, 209. l. 2. c. 7. sect. 12, 14.

So, if he be sent by a general Pass, and not from Parish to Parish. R. Lamb. 208. l. 2. c. 7. sect. 13.

[By

[By *St. 17 G. 2. c. 5. §. 5.* Constable or other such Officer neglecting to apprehend or convey before Justice any Offender, shall be punished as therein after directed, which by *§. 22.* is to be by forfeiting not more than 5*l.* nor less than 10*s.* to the Poor, to be levied by Distress.]

By the *St. 39 El. 4.* Any letting, or disturbing the Punishment or conveying of a Vagabond, or Relief or Settling of impotent Poor or making *Rescous* against the Officer, on Conviction by Confession, or two Witnesses, before two Justices of Peace, shall be bound to Good-behaviour, and forfeit 5*l.* to be levied and employed as the Forfeiture of a Constable *supra.* (B. 80.) In otherb.

And any wittingly bringing into this Realm, any like to be a Vagabond, &c. from Ireland, Scotland, or the Isle of Man, forfeits 20*s.* to the Poor of the Parish, for every Rogue set on Shore.

By the *St. 1 Jac. 7.* Every one shall cause a begging Rogue, resorting with his Knowledge to his House to beg, to be apprehended and carried to the next Constable, on Pain of 10*s.* to be levied by Distress and Sale *ut supra*, on Conviction *ut supra.*

[By *St. 17 G. 2. c. 5. §. 5.* If any Person charged by a Justice neglects to apprehend and deliver to Constable, or carry before a Justice, an Offender against that Act, he forfeits 10*s.* to the Poor, to be levied by Distress.]

[By *§. 23.* Whoever permits Rogue, Vagabond, or incorrigible Rogue, to take Shelter in his House or Buildings, and doth not apprehend, or give Notice to Constable to apprehend, and carry him before Justice, shall forfeit from 40*s.* to 10*s.* half to Informer, half to Poor, and indemnify the Parish; to be levied by Distress, by Warrant of one Justice.]

[By *§. 24.* Child above seven committed as Vagrant, may be put out Servant or Apprentice till Twenty-one, or otherwise; and the Person with whom such Child was found, if found with it after placed out, so offending again, shall be deemed an incorrigible Rogue.]

[By *§. 25.* Vagrant delivered of a Child shall be detained till she can be safely conveyed to a Justice, who shall commit her till Quarter-Sessions; who may, if Cause, order her to be whipt and detained for six Months. The Treasurer shall pay the Charges of such Parish. The Child, if a Bastard, shall be settled at the Mother's Settlement, and not where born.]

By the *St. 13 & 14 Car. 2. 12.* Justices of Peace to whom a Vagabond is brought, may reward the Apprehender, by giving him an Order under Hand Seal, to the Constable of the Town where he past unapprehended, to pay 2*s.* and if he refuse may levy the Penalty of the *St. 1 Jac. 7.* and out of it allow to the Apprehender 2*s.* and for the Loss of his Time. (B. 81.) Reward for apprehending.

And if apprehended on the Confines of a County, on Certificate of a Justice of Peace of the County where apprehended, a Justice of Peace of the other County shall give a Warrant to the Constable of the Parish where he past unapprehended, to pay 2*s.* to the Apprehender; and if the Constable refuse they may levy 10*s.* according to the *St. 39 El. 4.* or so much thereof for his Expences and Loss of Time as the Justice of Peace shall think fit.

[By *St. 17 G. 2. c. 5. §. 1.* Any Person may apprehend a Beggar in his (the Beggar's) own Parish, and carry him before a Justice, and shall have 5*s.* from the Overseer, which shall be allowed in his Account.]

[By *§. 5.* Any Person may apprehend any Offender against this Act (*i. e.* idle and disorderly Person, Rogue and Vagabond, or incorrigible Rogue) and carry him before a Justice; and such Person (Constable or not) shall have 10*s.* Reward from the High-Constable, who shall be repaid by Treasurer of County. Constable neglecting to pay Reward forfeits 20*s.*]

[By *St. 18 G. 3. c. 19.* Constables are to be reimbursed their Expences on Account of their Parishes (not otherwise provided for) out of the Poor's Rates; if the Vestry disallows the Account, a Justice may settle it. Overseers may appeal.]

[By the same Statute, The Court before whom any Person is tried for Felony, may order the Prosecutor his Expences, and an Allowance for Loss of Time.]

(B. 82.)
House of
Correction.
By whom
erected.

By the *St. 39 El. 5.* (made perpetual by the *St. 21 Jac. 1.*) Any Person of Age, discreet, and of sane Memory, seised in Fee, may by Deed inrolled in *Chancery* erect an House of Correction, Hospital, &c. to have Continuance for ever; and place there such Head and Members as he thinks fit; which House, &c. shall be incorporate, have perpetual Succession, Common Seal, may purchase Goods and Lands, not above 200 *l. per Annum*, (nor shall have less than 10 *l. per Annum*) Freehold, and not holden in *Capite*, or by Knight's Service, may sue and be sued, and governed by the Rules of the Founder not contrary to Law, may lease for twenty-one Years in Possession at the ancient Rent, but cannot alien in Perpetuity.

By the *St. 39 El. 4.* Justices of Peace in a County or Corporation, at the Quarter Sessions, may erect an House of Correction, and provide a Stock, and take care for the Governing, and for the Correction of Offenders committed, and make Rates, &c. for those Purposes.

By the *St. 7 Jac. 4.* In every County there shall be erected an House of Correction with convenient Backsides, Implements, &c. which shall be conveyed to such Persons as the Justices of Peace at the Quarter Sessions think fit, for Correction and setting to work of Vagabonds, Rogues, sturdy Beggars, and other idle and disorderly Persons. And Justices of Peace at Quarter Sessions may elect a Governor or Master, to punish and set to work Persons sent thither, who shall be no Charge to the County, but maintained by their own Labour: And may allow such Master a yearly Salary for his Pains, and relieving the Sick, to be paid quarterly before-hand by the Treasurer, and in Default of Payment to be levied by such Master, in such Manner as the Treasurer by the *St. 43 El. 2.* may levy it. And such Governor not giving Account to the Justices at Quarter Sessions of all sent to him, or letting any go abroad, or escape, may be fined by the Quarter Sessions, which Fine shall be paid to the Treasurer.

By the *St. 13 & 14 Car. 2. 12.* Workhouses may be erected within the weekly Bills of Mortality, which shall be incorporate and have several Powers there allowed, &c.

By the *St. 39 El. 5.* A Body Politick which may alien, as Mayor and Commonalty, &c. may erect an House of Correction. *2 Inst. 722.*

And every other, who has Ability by Law to grant. *Ibid.*

The Endowment by this Statute must be of Freehold Land of an Estate in Fee Simple. *Ibid.*

Of Land above the Value of 10 *l. per Annum*, and not above 200 *l. per Annum*. *Ibid.*

But if it does not exceed that Value at the Time of the Endowment, it is sufficient, though it be afterwards improved to a greater Value. *Ibid.*

And if the first Endowment be not of so great a Value, they may afterwards purchase other Land to the Value of 200 *l. per Annum* in the whole. *Ibid.*

And they may take Goods without Limitation. *Ibid.*

And Chattels Real. *2 Inst. 723. in Marg.*

But the Endowment must be made by Deed inrolled in *Chancery*, and not by other Conveyance. *2 Inst. 722.*

But the Deed need not be indented, or inrolled within six Months. *2 Inst. 723.*

They must be erected to have Perpetuity, and not for Life, or Years. *Ibid.*

Justices of Peace may erect an House of Correction at any Time by the *St. 39 El. 4.* though the *St. 7 Jac. 4.* limits a Time for the doing it. *2 Inst. 729.*

And such House of Correction erected, may be so ordered, that it be incorporated within the *St. 39 El. 5.* *2 Inst. 730.*

If an old House be converted to this Purpose, it shall be said to be erected, tho' it be not built *de novo*. *Ibid.*

So, if an House were antiently erected, the Justices of Peace may erect a new House of Correction, by the *St. 39 El. 4.* which continues in Force. *R. 1 Sal. 362.*

But that ought to be at the Charge of the County, and not of a particular Precinct. *Ibid.*

So it ought to be directed by the Justices at the Quarter Sessions; for they cannot delegate their Authority to other Justices to do it. *R. 1 Sal. 362, 3.*

[By 12 G. 2. c. 29. §. 13. No Part of County-rate may be applied to repair Houses of Correction or Prisons, but on Presentment of the Grand Jury.]

[By St. 14 G. 2. c. 33. §. 2. Quarter-Sessions, where there are no Affizes, may, on Presentment of Grand Jury, repair, enlarge or purchase House, or Land to build on for Houses of Correction.]

[By St. 15 G. 2. c. 24. Justices of Liberties and Corporations may commit Offenders to the Houses of Correction of Counties, to which such Liberty contributes.]

[By St. 17 G. 2. c. 5. §. 30. Quarter-Sessions, on Presentment of Grand Jury, may erect or purchase, or enlarge House of Correction, and raise Money for that Purpose.]

[By §. 31. Houses of Correction are to be under the Direction of Quarter-Sessions, who may also fine or remove the Master.]

[By §. 33. The Expences relating to Vagrants, to Houses of Correction, and Persons there sent, to be raised by Quarter-Sessions, according to the Manner directed in St. 12 G. 2. c. 29.]

By the St. 39 El. 4. Houses of Correction are ordered for Offenders committed to them.

(B. 83.)
Who may be
committed to
it.
2 *Vide the St.*
12 Ann. 23.

But by the St. 7 Jac. 4. Those general Words are explained, to intend Vagabonds, Rogues, Sturdy Beggars, and other idle and disorderly Persons. *Inst. 730.*

And therefore, all adjudged Rogues, or Vagabonds, may be committed to the House of Correction. *Ibid.*

So an able Man, who refuses Labour, tho' he be not a Vagrant, may be committed to the House of Correction, if he has no Means of Living. *R. 2 Inst. 730.*

So, tho' he has Means of Living, if he be an idle or a disorderly Person. 2 *Inst. 730.*

[Justices may commit to hard Labour till next Quarter-Session, a Woman taken on a general privy Search, and charged on Oath with being a loose, idle and disorderly Person. *Mary Freeman, alias Talbot's Case, M. 4 G. 2. Str. 882.*]

By St. 17 G. 2. c. 5. §. 32. When a Justice has Power to commit to House of Correction, and the Time and Punishment not directed, he may commit to hard Labour till next Quarter-Session.]

(B. 84.) Cottages.

By the St. 31 El. 7. None shall erect, or convert any Building to a Cottage for Habitation, unless he lay to it four Acres of Ground of his own Freehold and Inheritance, near to such Cottage, to be continually occupied therewith, on Pain of 10 l. to the Queen for every Offence. *Vide Leet, (L. 14.)*

And none shall continue a Cottage, without four Acres of Ground, on Pain of 40 s. per Month.

Of which Offences, Justices of Assize, Justices of Peace at the Sessions, and Lords of Leets may inquire, &c. by Indictment, or Presentment, and award Execution, by *Fieri facias, Elegit, Capias, &c.*

Provided this Statute extend not to Cottages in a City, Borough, or Market Town, or within a Mile of any Mines, Quarries, Brick-kilns, Limepits, &c. for the only Dwelling of Labourers in the said Works; or within a Mile of the Sea, or a Navigable River, for the only Dwelling of Sailors, or any whose Occupation is the Making, Furnishing, or Victualling of a Ship or other Vessel; nor to a Cottage in a Forest, Chace, Warren, or Park, for the Under-keeper, or Warrener; nor to a Cottage for a Common Herdsman, or Shepherd, or for a poor impotent Person, or allowed by Justices of Assize, or of the Peace, by Order entered in open Assizes, or Quarter Sessions. *Vide Leet, (L. 14.)*

This Act is a Statute, and not an Ordinance. *R. 1 Sal. 195.*

By the *St. 43 El. 2.* Churchwardens and Overseers, by Agreement with the Lord of the Wast, or by Order of the Quarter Sessions, with the like Agreement, may erect Cottages on the Wast, at the Charge of the Parish, for the only Habitation of the impotent Poor of such Parish.

A Body Politick, as well as Natural, is prohibited the Erecting or Continuing of Cottages. *2 Inst. 736.*

And it is not sufficient, if the Cottage has four Acres of Land holden by Copy; for it must be Freehold. *2 Inst. 737.*

Or, of Land holden for Life, or Years; for it must be an Inheritance in Fee, or Tail. *Ibid.*

Or, if the Acres are not accounted according to the *St. 35 Ed. 1. de adm. terris, viz.* sixteen Feet and an half to the Pole. *Ibid.*

If a Lord of a Manor permit a Cottage to be erected, or continued upon his Wast, and take Rent for it, he shall be fined within the Statute. *R. Jon. 272.*

If a Parish erect a Cottage, without the particular Direction of the *St. 31 El. 7. Vide 1 Sid. 359.*

A Common Herdsman, or Shepherd, cannot inhabit in a Cottage, not having four Acres of Land annexed, unless it was erected before the *St. 31 El. 7.* for the Exception, as to them, is only to a Cottage heretofore made. *2 Inst. 737.*

So neither can a poor impotent Person, unless in a Cottage erected according to the *St. 43 El. 2. 2 Inst. 737.*

An Information lay in B. R. for the erecting of a Cottage, as well as before Justices of Assize, or Peace. *1 Sid. 359.*

But this is now restrained by the *St. 21 Jac. 4. (Vide 1 Sid. 359.)*

An Indictment, or Presentment for a Cottage is bad, unless it be said to be for Habitation. *R. 1 Sand. 135. 1 Mod. 295.*

And it shall conclude, *Contra formam Statuti.* *R. 1 Sand. 135. D. Skin. 565.*

And if the Presentment be in a Leet, they shall not make an Amerciament under 10 *l.* *1 Sand. 135.*

Yet it is not necessary to say, that any one inhabits there, if the Indictment says, it was erected for Habitation. *R. 2 Bul. 264. R. Skin. 564.*

But it is not within the *St. 31 El. 7.* if a Man erect a Cottage for his own Habitation, tho' he does not lay four Acres of Land to it: for the Statute extends only to Cottages erected for the Habitation of others. *1 Bul. 52.*

So, if a Copyholder erect an House upon his Copyhold, and does not lay four Acres of Land to it, it is not within the Statute. *R. 1 Bul. 52.*

So, if a Cottage was erected upon the Manor of A. before his Purchase, and he does not take Rent for it; A. shall not be punished. *R. Jon. 273.*

If the Indictment does not shew by whom the Cottage was erected, it shall be quash'd. *R. Jon. 273.*

So, if an Indictment be, for Erection and Continuance, without saying, to both, *contra formam Statuti.* *Comb. 307.*

[By *St. 15 G. 3. c. 32.* The *Sat. 31 Eliz.* is repealed.]

(B. 85.) Inmates.

Vide Leet,
(L. 14.)

By the *St. 31 El. 7.* No Inmate, or more Families than one, shall dwell in any Cottage, on Pain that the Owner of such Cottage, placing or suffering such Inmate, &c. shall forfeit to the Lord of the Leet 10 *s. per Mensem*: whereof the Justices of Peace at the Sessions may inquire by Indictment, &c. and award Execution for the Forfeiture by *Fieri facias, Elegit, Capias, &c.* *Vide Leet, (L. 14.)*

But by the *St. 43 El. 2.* Churchwardens and Overseers of the Poor may place Inmates, or more Families than one, of impotent Poor of their Parish, in one Cottage or House.

Before this Statute there was no Remedy against Inmates, but by By-Laws in the Leet. *Kit. 45. a.*

A Man is accounted an Inmate, who not having sufficient to live of himself by his Land, Art, or Trade, dwells in Part of another's House. *Kit. 45. b.*

As, if Common Breakers of Hedges, or other idle or suspicious Persons dwell in an House with another. *Ibid.*

Or, if a poor Labourer dwells with another, and both go by the same Door into the High Street. *Ibid.*

Or, if a Man, not of Ability, take certain Rooms in an House. *Ibid.*

But if a Man demise Parcel of the House where he dwells, and severs it from the other Part, and makes separate Doors to the High-Street, the Lessee is not an Inmate; for they are two Houses. *Ibid.*

Or, if a Man take another *ad Mensam*, or to sojourn with him, and he has certain Rooms; he is not an Inmate. *Ibid.*

Or, if a Man take his married Daughter with her Husband, according to Agreement, and suffer them to have certain Rooms in his House. *Kit. 45. b.*

Or, if he suffer a Gentlemen to have certain Rooms in his House, who does not table with him, but goes to a Victualler's for his Sustenance. *Kit. 45. b.*

[Defendant having Houses in *Saint Catherine's*, leased the Rooms to several Families. The Ch. J. (*Pratt*) ruled, That it was not within the Statute, for a House is not a Cottage. *Rex v. Pattle, M. 7 G. Str. 405.*]

[*Pratt*, Ch. J. held, That Inmates in Cottages in Market-towns are exempt, and that where the Houses are contiguous, they are Part of the Town. *Ibid.*]

This Statute extends to a Cottage, that has Inmates within a City, Borough, or Town, as well as elsewhere. *2 Inst. 738.*

And to an Inmate in a Cottage, that has above four Acres of Land annexed to it, as well as in a Cottage that has no Land. *Ibid.*

But one Indictment against several for having Inmates shall be quashed. *2 Rol. 164.*

(B. 86.) Wood-stealers, &c.

By the *St. 43 El. 7.* Any Convict, by Confession or one Witness, before a Justice of Peace, Mayor, &c. that he cut or took away any Corn growing, or robbed any Garden or Orchard, or for breaking or cutting a Hedge, Pales, Rails, or Fence, or pulling up Fruit Trees, with Intent to carry away, or cutting or spoiling Wood, Underwood, Poles or Trees, not being Felony, or for procuring, or knowingly receiving such Offender, shall pay to the Party such Recompence, as the Justice of Peace shall direct; or, if unable, shall be delivered to the Constable to be whipped; and for the second Offence shall be whipped: And the Constable refusing to whip shall be committed to Gaol, without Bail, till he procure such Whipping. Provided a Justice of Peace shall not act in his own Case, unless assisted by some other Justice.

By the *St. 15 Car. 2. 2.* A Constable, or any Person, may in his Parish, &c. apprehend whom he suspects of having or carrying any Wood, &c. or any Bark, Gates, Stiles, Posts, Rails, Pales, Broom, or Furze, (and the Constable by Warrant of a Justice of Peace may search the House and Yards of any suspected, &c. and finding, may apprehend) and carry before a Justice of Peace of the County or Town: And if he cannot give a satisfactory Account, how he came by such Wood, with the Owner's Consent, or by a Day set, produce the Seller, or a Witness to prove the Sale, he shall for the first Offence pay such Satisfaction to the Owner, and in such Time as the Justices shall appoint, and likewise a Sum not above 10s. to the Poor, and on Non-payment shall be whipped by the Constable, or sent to the House of Correction, as the Justice thinks best, for not more than a Month: For the second Offence, he shall be sent to the House of Correction for a Month, and kept to hard Labour: For the third Offence shall be deemed an incorrigible Rogue.

And if any buys stolen Wood, &c. of any, whom he might justly suspect to come unlawfully by it, a Justice of Peace having examined, and found the Matter on Oath, shall order the Buyer to pay treble Value to him, from whom the Wood, &c. was stolen, and if not paid, shall levy it by Distress and Sale, and

for want of Distress, commit the Offender to Gaol for a Month, without Bail.

But none shall be prosecuted on this Statute, but within six Weeks after the Offence.

The Statutes 43 *El.* 7. and 15 *Car.* 2. 2. extend to Gentlemen as well as others; for the Court cannot make a Distinction between the Quality of Persons. *Per Cur' B. R. Trin. 2 Ann. upon Conviction of one Burnaby. 1 Sal. 181.*

But Justices of Peace cannot make a Conviction upon these Statutes, if a Property be claimed in the Wood; and if they do, a Prohibition lies, or an Action against him who levied the Damages awarded by the Conviction. *Per Cur. in Burnaby's Case, 1 Sal. 182.*

And after a Conviction removed by *Certiorari*, the Defendant may suggest his Property by way of Plea. *Per Holt, but the others cont. in Burnaby's Case, 1 Sal. 182.*

And if the Conviction does not specify the certain Number of Trees, or Quantity of Wood cut, it is bad. *R. Trin. 2 Ann. B. R. in Burnaby's Case, 1 Sal. 181.*

[By *St. 23 G. 2. c. 26.* Person convicted by one Justice of stealing or maliciously destroying Turnips, shall make Satisfaction to the Owner, and pay not exceeding 10*s.* to the Poor, or in Default be committed not exceeding a Month, or whipt for first Offence; and for the second committed for three Months.]

[By *St. 6 G. 3. c. 36.* Persons in the Night-time destroying or taking Timber-tree, or Tree likely to become Timber, or in an inclosed Ground, any Roots, Shrubs, or Plants, of 5*s.* Value, and all aiding and receiving, are guilty of Felony, and may be transported for seven Years.]

[By *St. 6 G. 3. c. 48.* Person damaging or carrying away Timber-tree, or Tree likely to become Timber, or any Part, or the Lop or Top, convicted before one Justice, shall forfeit not exceeding 20*l.* and Charges, or be committed from twelve to six Months for first Offence, 30*l.* or from eighteen to twelve Months for second Offence, and Felony and Transportation for seven Years for third Offence.]

[Oak, Beech, Chesnut, Walnut, Ash, Elm, Cedar, Fir, Asp, Lime, Sycamore and Birch, are Timber; and by *St. 13 G. 3. c. 33.* Poplar, Alder, Larch, Maple and Hornbeam are so also. *N. B. PINE is omitted in both Acts, probably thro' Inattention.*]

[Destroying or carrying away Root, Shrub, or Plant, out of Field or cultivated Land, convicted before one Justice, forfeits not exceeding 40*s.* and Charges for first Offence, 5*l.* for second Offence, and Felony and Transportation for seven Years for third Offence.]

[Destroying or carrying away from Woods, Underwoods, or Wood-grounds, any Wood, Underwood or Sticks, or having the same in their Custody, and not giving good Account thereof, convicted before one Justice, forfeits not exceeding 40*s.* and Charges for first Offence, 5*l.* for second Offence, and deemed incorrigible Rogue for third Offence.]

[By *St. 9 G. 3. c. 41.* This Clause is extended to the King's Forests, &c. and to Hollies, Thorns and Quicksets there, or in any other Wood-grounds.]

[On Non-payment, Commitment to hard Labour for one Month, and once whipt, for first Offence; and for three Months, and thrice whipt for second Offence.]

[Person attempting to hinder seizing Offenders, forfeits 10*l.* or hard Labour not exceeding six Months.]

[By *St. 13 G. 3. c. 32.* Persons stealing or maliciously destroying Turnips, Potatoes, Cabbages, Parsnips, Pease or Carrots, on Conviction before one Justice forfeit 10*s.* above the Value to be given to the Owner and Poor. The Owner may be Evidence, and then all the Forfeiture goes to the Poor.]

(B. 87.) Victuallers.

By the *St. 23 Ed. 3. 6.* Mayors, Bailiffs, &c. shall inquire and punish Victuallers, who sell at excessive Prices, and if convict of Neglect in Inquiring, shall pay treble Price.

By the *St. 12 R. 2. 3. Rast.* (which confirms the Statute of Victuals) it is enacted, that Victuallers be justified by Justices of Peace at the Suit of the King, or of the Party.

By the *St. 12 Ed. 4. 8.* Mayors, Bailiffs, &c. and those who have Charter, shall have the sole Surveying of a Victualler; and all Patents to others for that Purpose are void.

Justices of Peace may inquire of Victuals, and Victuallers who do not observe the Assize. *Semb. Cro. Car. 113.*

By the *St. 12 Ed. 2. 6.* An Officer in a City or Borough, who hath an Assize, shall not merchandize for Wine or Victual, on Pain of forfeiting it, either in Gross or by Retail.

By the *St. 6 R. 2. 9.* A Victualler shall not execute a judicial Office in a City, or Borough, if sufficient beside.

But by the *St. 3 H. 8. 8.* If a Victualler be chosen Officer, two others, not Victuallers, chosen by the Commonalty, shall be sworn with him to set Prices, &c. And then such Officer may sell Victual in Gross, or by Retail.

By the *St. 6 R. 2. 10.* Aliens *Amies* may bring Fish, or other Victual to Cities, Boroughs, &c. and there sell them by Retail, or in Gross. Confirmed by the *St. 1 H. 4. 17.*

And by the *St. 14 H. 6. 6.* A Disturber of such Foreigner forfeits ten Pounds.

By the *St. 4 H. 7. 3.* In London, or any walled Town, (except *Berwick* and *Carlisle*) or in Cambridge, no Butcher shall kill within the Walls, on Pain of 12*d.* for every Ox, and 8*d.* for every other Beast.

By the *St. 51 H. 3. of Pillory and Tumbrel*, A Jury shall inquire of a Butcher, who sells contagious Flesh, or dead of the Murrain, of a Cook who seeths unwholesome Fish or Flesh, and of such who buy Flesh of Jews, and sell it to Christians. (B. 88.)
Corrupt Victual.
Vide Leet,
(L. 10.)

By a *St. incerti Temporis* (*H. 3. Ed. 1. or Ed. 2.*) A Butcher who sells Swine's Flesh meazled, Flesh dead of the Murrain, or bought of Jews, for the first Offence shall be amerced; for the second pilloried; for the third put to Fine and Imprisonment; for the fourth shall abjure the Town. *Vide Keble's Statutes*, fo. 86. 17 *Ed. 2. 7.*

By the *St. 23 Ed. 3. 6.* Butchers, Fishmongers, Regraters, Hostlers, Brewers, Bakers, Poulterers, and all other Sellers of Victuals shall sell at reasonable Prices, having Regard to the Price in Places adjoining. (B. 89.)
Price.
Vide Leet,
(L. 9, 14.)

By the *St. 13 R. 2. 8.* Victuallers shall have no more Gains than is limited by the Justices of Peace, on Pain to be punished at their Discretion, where no Punishment is expressly given.

By the *St. 25 H. 8. 2.* On Complaint of enhancing the Prices of Victuals, the Lords of the Privy Council, and Justices of either Bench, Chamberlains, Chancellor and Barons of the *Exchequer*, or seven of them, (whereof the Lord Chancellor, Treasurer, Lord President, or Privy Seal to be one) may set the Prices at which all shall sell after Proclamation made: But Mayors, Bailiffs, &c. of Towns Corporate may set the Prices, as before this Act.

By the *St. 2 & 3 Ed. 6. 15.* A Butcher, Brewer, Baker, Poulterer, Cook, or Fruiterer conspiring to sell at certain Prices, forfeits 10*l.* for the first Offence, or twenty Days Imprisonment with Bread and Water only, on Non-payment in six Days; 20*l.* for the second Offence, or Pillory; 40*l.* for the third Offence, or Pillory and one Ear, and be infamous. *Vide Leet*, (L. 14.)

If a Corporation of any of these Victuallers conspire, they shall be dissolved. *Vide Leet*, (L. 9.)

(B. 90.)

(B. 90.) Weights and Measures.

(B. 90.)
What Weights
are allowed.
Troy.

By the *St. 11 H. 7. 4.* Two Justices of Peace (1 *2y.*) by Examination or Inquiry, may hear and determine Offences in Mayors, &c. for not making, signing, and viewing Weights and Measures, or in Buyers and Sellers by defective Weights and Measures; and may set a Fine and Amerciament on the Offenders, and destroy such defective Weights and Measures.

[By *St. 10 G. 3. c. 44.* Trader subject to Excise, using false Scales or Weights, to defraud the King of Duties, forfeits 100*l.*]

As to Troy Weight, *Vide Leet*, (L. 6.) *Vide 4 Inst.* 273.

Averdupois.

As to *Averdupois*, *Vide Leet*, (L. 7.)

Averdupois is so called, because it gives full Weight. *4 Inst.* 273.

By *Averdupois* Weight are weighed all Physical Drugs, Wax, Pitch, Tar, Iron, Steel, Lead, Hemp, Flax, Flesh, Butter, Cheese, and all Commodities subject to Waste. *4 Inst.* 273.

By the *St. Comp. Pond.* 25 *l.* Weight makes a Pound of Lead, 12 Pounds a Stone, 6 Stone wanting 2 Pounds a Formel, 30 Formel a Load.

By the *St. Comp. Pond.* the *St. 25 Ed.* 3. 9, and 31 *Ed.* 3. 8, 14 Pounds of Wool make a Stone, 26 Stone and no more a Sack, and 12 Sack a Last—So, the *St. 11 H. 7. 4.* *Dav.* 8. *b.*

(B. 91.)
What Mea-
sures are al-
lowed.

By the *St. M. Ch. 9 H. 3. 25.* *Sit Una Mensura Vini per totum Regnum, et una Mensura Cervisie, et una Mensura Bladi, Scilicet, quarterium Lond.*

So, by the *St. 25 Ed.* 3. 10; 13 *R.* 2. 9; 27 *Ed.* 3. 10; and 16 *Car.* 1. 19.

By the *St. Comp. Mens.* 31 *Ed.* 1. By Consent of the whole Realm, the King's Measure was made; viz. 32 Grains of Wheat, in the Midst of the Ear dry, make a Penny Sterling; (or 24 Grains of Barley *4 Inst.* 273. 4.) 20 *d.* make an Ounce; 12 Ounces make a Pound; 8 Pounds make a Gallon of Wine; 8 Gallons make a Bushel; 8 Bushels make a Quarter. Confirmed by the *St. 12 H. 7. 5.*

A Pound Weight is a Pint in Measure; 2 Pints make a Quart; 2 Quarts make a Pottle; 2 Pottles make a Gallon; 2 Gallons make a Peck; 4 Pecks make a Bushel; 4 Bushels make a Comb; 2 Combs make a Quarter; 6 Quarters make a Wey; 10 Quarters make a Last. *4 Inst.* 274.

By the *St. 25 Ed.* 3. 10. Confirmed by the *St. 15 R.* 2. 4; 1 *H.* 5. 10. and by the *St. 11 H. 7. 4.* The Quarter shall contain 8 Bushels, and no more.

By a *St. incerti Temporis*, (*H. 3. Ed.* 1. or *Ed.* 2.) 4. *de Pist.* Toll shall be taken by the King's Measure. *Vide Keble's Stat.* fo. 85.

De Mensura Vini & Cervisie. *Vide Post*, (B. 94, 98.)

(B. 92.)
Measure of
Length, &c.

By the *St. Comp. Ulnar* Three Grains of Barley, dry and round, make an Inch; 12 Inches make a Foot; 3 Feet a Yard; 5 Yards and an Half a Perch; 40 Perches and 4 in Breadth make an Acre. *Vide St. de mens. terris* 33 *Ed.* 1. 4 *Inst.* 274.

By the *St. 27 H. 8. 6.* Four Inches make an Hand.

A Yard and Quarter make an Ell; 5 Yards and an Half make a Pole or Perch; 40 Poles make a Furlong; 8 Furlongs make an *English* Mile. *4 Inst.* 274.

Seven Feet make a Fathom. *Dalt.* 121. (*Edition of 1727*, 370.)

(B. 93.)
Manner of
Measuring.

By a *St. incerti Temporis*, (*H. 3. Ed.* 1. or *Ed.* 2.) 9. *de Pist.* No Corn shall be sold by the Heap, except Oats, Malt, and Meal. *Vide Keble's Statutes* 86.

By the same *St.* 4. No Toll shall be taken by the Heap, but by Strick.

And by the same *St.* 8. Any convicted of double Measure, a greater to buy by, and a less to sell by, shall be imprisoned. *Vide Keble's Statutes* 85, 86. 17 *Ed.* 2.

(B. 94.)
Assise, and
Assay of Ale.

Assise is sometimes taken for an Ordinance, for putting Things into a certain Rule and Disposition. *Lit. S.* 234.

Cervisia in the ancient Statutes includes Beer. 4 Inst. 262. in Marg.

Bier is a Saxon Word. 4 Inst. 262. in Marg.

By the St. M. Ch. 9 H. 3. 25. *Per Totum Regnum fit una Mensura Cervisie.*

By the St. Mens. 31 Ed. 1. A Penny Sterling shall weigh 32 Grains of Wheat dry in the Midst of the Ear; 20 Pence make an Ounce; 12 Ounces a Pound; and 8 Pounds a Gallon of Wine.

By the St. 23 H. 8. 4. Every Barrel of Beer shall contain 36 Gallons, a Kilderkin 18 Gallons, a Firkin 9 Gallons, of the King's Standard Gallon; and a Barrel of Ale 32 Gallons, a Kilderkin 16, and a Firkin 8 Gallons, of the same Standard.

By the St. 12 Car. 2. 23. A Barrel of Beer shall be 36, of Ale 32 Gallons, according to the Standard of the Ale-Quart, 4 of which make a Gallon; and of other Liquors, according to the Wine Gallon.

By the St. 1 W. & M. 1 Sess. 24. A Barrel of Beer and Ale shall be 34 Gallons, by the Ale-Quart. *

By the St. 11 & 12 W. 3. 15. A Retailer of Ale, or Beer, shall sell only by the Standard Ale-Quart, or Pint, duly marked, on Pain of a Sum, not above 40 s. nor under 10 s. a Moiety to the Poor, a Moiety to the Informer, to be levied by Justices on Goods of the Offender, on Oath of one Witness in thirty Days.

* [Except in London and Westminster, and the Bills of Mortality, where it shall be according to former Acts.]

And the Officer of Excise shall *gratis* bring the Standard Quart and Pint to every Borough and Town, by 24 June 1700, if no Brass Standard Quart and Pint already there, on Pain of 5 l.

And the Mayor, &c. shall see every Quart and Pint measured by it, and mark't with W. R. and a Crown, on Request, or forfeit 5 l. and treble Damages and Costs to the Party.

By the 2 & 3 Ed. 6. 10. In June, July, and August, Malt shall be seventeen Days in the Fatt, Floor, Steeping, and Drying, and at other Times three Weeks, on Pain of 2 s. per Quarter, otherwise it cannot be wholesome; he that mingles ill made Malt, or of Mow-brunt or spired Barley with good, forfeits 2 s. per Quarter, and he that sells it not well trodden, rubbed, or fanned forfeits 20 d. per Quarter; a Moiety to the King, a Moiety to the Informer.

By the St. 1 Jac. 18. An Importer of corrupt or unclean Hops forfeits them, and the Brewer, who uses them, forfeits the Value.

[By St. 2 G. 3. c. 14. If Brewer or Retailer mixes strong Beer or strong Worts after gauging, with small Beer or Wort, or Water, he forfeits 50 l.]

By the St. Aff. Pan. and Cerv. 51 H. 3. When Wheat is sold at 3 s. or 3 s. 4 d. (B. 95.) per Quarter, Barley at 20 d. or 2 s. Oats at 16 d. Brewers in Cities shall sell two Price. Gallons of Beer or Ale for a Penny, and out of Cities three or four Gallons; and when in Cities Brewers sell three, out of Towns they ought and may sell four Gallons for a Penny.

By the St. 23 H. 8. 4. None shall sell a Barrel, Kilderkin, or Firkin of Beer or Ale, but at the Prices set by the Mayor, &c. in Towns Corporate, and by Justices of Peace out of Towns, on Pain of 6 s. for a Barrel, 3 s. 4 d. per Kilderkin, 2 s. per Firkin, 10 s. for a greater and 12 d. for a less Vessel.

By the St. 1 Jac. 9. An Inn-keeper, Alehouse-keeper, or Victualler, who sells less than a full Quart of the best Beer or Ale, or two Quarts of Small for a Penny, forfeits 20 s. to the Use of the Poor, to be levied by Distress and Sale after six Days, or else by Imprisonment.

By the St. 12 Car. 2. 24. No Brewer, or Retailer of Beer or Ale shall take more than the Excise above the usual Prices, but as much as the Excise is above the usual Prices he may take.

By the St. 1 W. & M. 1 Sess. 24. No Retailer of Beer or Ale shall during that Act be impleaded, for selling above the Prices before appointed.

[By St. 2 G. 3. c. 14. No Brewer or Retailer shall be sued for advancing the Price of strong Beer in a reasonable Degree.]

By the St. 51 H. 3. Aff. Pan. and Cerv. When a Quarter of Wheat was 12 d. (B. 96.) Waftel Bread of a Farthing shall weigh 6 l. 16 s.; Cocket Bread of the same Of Bread. Vol. IV. O o Corn, (L. 8.)

Corn, more than Wastel by 2s.; of worse Corn, more by 5s.; Simnell Bread less than Wastel by 2s.; Bread of the whole Wheat shall weigh a Cocket of 5s. more than Wastel, and an Half; Bread of Treet shall weigh two Wastels; Bread of Common Wheat shall weigh two great Cockets, & *sic pro Rata*.

According to this Proportion, the Affise of Bread at this Day, when Wheat is sold at

20s. per Quarter	1. oz. dwt.	Wheaten	1. oz. dwt.	Household	1. oz. dwt.
24	1 4 18	2 1 6	2 9 16	Troy	
28	1 2 2	1 9 2	2 4 4		
32	1 0 1	1 6 0	2 0 2		
36	0 10 11	1 3 16	1 9 2		
40	0 9 8	1 2 1	1 6 16		
44	0 8 9	1 0 12	1 4 18		
48	0 7 13	0 11 10	1 3 6		
52	0 7 1	0 10 10	1 3 1		
56	0 6 10	0 9 14	1 1 0		
60	0 6 0	0 9 0	1 0 0		
	0 5 11	0 8 8	0 11 2		

A Penny White Loaf will then weigh

Et sic pro Rata, the Penny Weight being now 3d. which was then a Penny Sterling, and a Pound of Silver being but 20s. till raised by H. 6. to 30s. by Ed. 4. to 40s. by H. 8. to 45s. and since to 60s.

Wingate's Abridgment, Weights 3.

At the Time of the Statute 51 H. 3. according to this Affise by the Computation of the King's Baker, a Baker in every Quarter of Wheat gained 4d. and the Bran and two Loaves, three Halfpence for three Servants, an Halfpenny for two Lads, an Halfpenny for Salt, an Halfpenny for Yeast, a Farthing for Candle, 2d. for Wood, and an Halfpenny for his Boutel. *Rast. Weights 2. Vide the St. 51 H. 3. Aff. Pan. & Cerv.*

But by the Book of Affise now in Use published by Proclamation *Eliz.* Bakers are allowed for their Charge in Baking in every Quarter of Wheat of a middle Price 4s. and Bakers in a Town Corporate, who pay Scot and Lot, 6s. *Wing. Abr. Weights 4.*

By the St. 51 H. 3. *Aff. Pan. & Cerv.* and the St. de Pist. *incerti Temporis* (H. 3. Ed. 1. or Ed. 2.) The Affise shall be set according to the Middle Price of Wheat, and not changed but on the Increase or Decrease of 6d. in the Sale of one Quarter. *Vide Keble's Statutes 85.*

[By St. 10 G. 3. c. 39. *Michaelmas* Quarter-Session shall appoint Persons in (from two to six) Market-towns, to make weekly Returns of the Prices of Corn to a Person at the Treasury, to be appointed by the Treasury, and to send Duplicates four Times a Year to the Clerk of the Peace; the Returns to be published weekly in the *Gazette*.]

[The Commissioners of Customs are to transmit annually to Treasury an Account of Corn exported and imported, and Bounties and Duties paid and received.]

[By St. 31 G. 2. c. 29. 3 G. 3. c. 11. and 13 G. 3. c. 62. A new Affise of Bread is settled; whereby, when Wheat (with the Allowance for Baking) is at

	Wheaten.	Standard Wheaten.	Household.
	oz. dr.	oz. dr.	oz. dr.
5s. per Bushel, the Penny-Loaf weighs	12 1	13 14	16 6
And the Peck-Loaf shall be sold for	1s. 11d.	1s. 8d.	1s. 5d.

[And the Magistrates have Power of permitting Bread to be made of other Grain; and when the Price of the Grain, and Allowance for Baking, is at 5s. per Bushel, the Penny-Loaf shall weigh,

Rye.	Barley.	Oats.	Beans.	Maslin,
oz. dr.	oz. dr.	oz. dr.	oz. dr.	($\frac{1}{3}$ wheat, $\frac{2}{3}$ rye.) oz. dr.
12 8	13 8	6 4	16 12	14 —
Peck Loaf 1s. 10d.	1s. 9d.	3s. 8d.	1s. 4 $\frac{1}{2}$ d.	1s. 8d.]

[There is a Penalty from 10l. to 40s. for using Allum, &c. or for having it in Possession, from 5l. to 40s. for adulterating Meal, and from 5l. to 20s. for adulterating Bread; 5s. per Ounce Deficiency in Weight; from 40s. to 10s. for not marking Bread.]

[The

[The Proportion between the three Sorts of Bread made of Wheat is to be, as 8, 7, 6. The Quantity of Wheaten which is sold for 8*d.* must be sold for 7*d.* if Standard, and 6*d.* if Household-bread; or, the Money which buys 6*lb.* of Wheaten, will buy 7*lb.* of Standard, and 8*lb.* of Household-bread. And white 2*d.* Loaves to be three-fourths of the Weight of Wheaten.]

[The Importance of the Subject constrains the Editor to remark, that these Laws have not yet produced the good Effect intended. The *St. 13 G. 3.* recites, that Household-bread is not generally made for Sale; the same may be said of the Standard-bread introduced by that Act; the Reason is obvious, when the Baker can gain 3*l.* per Cent. on Wheaten, he can gain but 2*l.* per Cent. on Standard, and but 1*l.* per Cent. on Household; he will therefore make neither of the latter; (nay, if the Baker buys his Flour, he cannot afford to sell Household-bread; if he buys Corn, and has it fairly ground, he may, and make a reasonable Profit.) On what Principles the Proportions between the different Sorts of Bread were settled, at 6, 7, and 8. so that Standard is One-sixth or Sixteen and Half per Cent. dearer than Household, and Wheaten is Two-sixths, or 33*l.* per Cent. dearer than Household, whereas the Difference of the Prices of the Flours whereof they are made, is but as 21 to 20, or 5*l.* per Cent. between Standard and Household, and 22 to 20, or 10*l.* per Cent. between Wheaten and Household; or why the *St. 31 G. 2.* altered that of 8 *Ann.* so as to allow about 14 per Cent. less Bread for the same Money, when the Price of Wheat and the Allowance for Baking are the same, doth not appear. In a Word, the high Price of Bread, (in Proportion to Wheat) seems to be occasioned by the two great Gains of the Miller or Mealman, and perhaps of the Baker; this last may be redressed by the Magistrates, on setting the Assize; the former, by enforcing or reviving, if necessary, the old Common Law, that no Miller shall buy Corn to sell again, either in Corn or Meal, but shall only serve to grind the Corn brought to their Mills; or perhaps still more effectually, by establishing Parish-Mills to be wrought by Hand or with a Horse, where every one may grind his own Corn gratis; the Poor would hereby be induced to grind and bake for themselves, and would thereby be enabled to eat Bread above 25*l.* per Cent. cheaper than they now do.]

By the *St. de Pift. incerti Temporis*, (*H. 3 Ed. 1. or Ed. 2.*) Every Baker shall have his own Mark for his Bread. *Vide Keble's Statutes 85.* (B. 97.) The Duty of a Baker.

By the *St. 51 H. 3.* Twelve Men sworn shall inquire of the Price of Wheat, and if Bakers keep the Assize; and the Bailiff shall bring in all the Bakers with their Measures.

By the same Statute, If a Baker be convicted, that he hath not kept the Assize, for the first, second, and third Offence he shall be amerced, if he exceed not above 2*s.* (And by the *St. de Pift. incerti Temporis* (*H. 3. Ed. 1. or Ed. 2.* not above 2*s.* 6*d.*) Weight in a Farthing Loaf; but if he want more Weight than that, or if he offend often, tho' he want less, he shall be set in the Pillory without Redemption. *Vide Keble's Statutes 85.*

The *St. M. Ch. 9 H. 3. 25.* provides, *Quod sit una Mensura Vini per totum Regnum.* (B. 98.) Of Wine.

By the *St. 2 H. 6. 11.* None shall import, or make a Ton of Wine, unless it contain 252 Gallons, a Pipe 126 Gallons, and the Tertian and Hoghead after the same Rate, on Pain to forfeit the said Wine, to the Lord of the Town, one fourth to the Informer: And Justices of Peace, and Mayors and Bailiffs who have Power of the Peace, may inquire of this Statute.

And by the *St. 18 H. 6. 17.* It is said, that by the antient Assize, every Ton ought to contain 252 Gallons, every Pipe 126 Gallons, a Tertian 84, an Hoghead 63 Gallons. *

By the *St. 1 R. 3. 13.* The Butt shall contain 126 Gallons, the Barrel 31 $\frac{1}{2}$ Gallons, Rundlet 18 $\frac{1}{2}$ Gallons. [S, by the St. 2 H. 6. 11.]

Twelve

Twelve Ounces make a Pound, eight Pounds a Gallon of Wine. 4 *Inst.* 274.

By the *St.* 27 *Ed.* 3. 8. All Wine imported for Sale shall be duly gauged by the King's Gauger, or his Deputy; and the Refuser forfeits his Wine, and shall suffer Imprisonment and Ranform; and if the Ton wants of the Affise, he shall abate in his Price.

By the *St.* 31 *Ed.* 3. 5. A Seller of a Ton or Pipe of Wine ungauged, shall forfeit it or the Value to the King.

By the *St.* 18 *H.* 6. 17. A Seller of a Ton, Pipe, Tertian or Hogshead of Wine, not gauged, forfeits it, or the Value, a Moiety to the Informer; and if it want of the Affise, he shall abate in the Price *pro Rata*, on Pain of Forfeiture.

By the *St.* 1 *R.* 3. 13. It is also enacted in like Manner.

By the *St.* 28 *H.* 8. 14. (which confirms the 1 *R.* 3. 13.) The Gauger shall mark the Contents of the Ton, &c. on the Head of such Vessel.

By the *St.* 1 *W. & M. Sess.* 1. 34. No Retailer of Wine shall sell but in Pewter sealed, on Pain of 5*l.* to the Informer.

By the *St.* 2 *W. & M. Sess.* 2. 14. Any Convict by Confession, or two Witnesses in thirty Days before a Justice of Peace, forfeits fifty Shillings.

The King cannot license to break the Affise of Wine by a *Non obstante* of the *St. de Pistoribus. Vau.* 343.

By the *St.* 4 *Ed.* 3. 12. Assay shall be made of Wines at *Easter* or *Michaelmas*, or oftner, by Lords, or Mayors and Bailiffs of Towns, and all found corrupt shall be poured out, and the Vessels broken: And the Chancellor and Treasurer, Justices of either Bench, and of Affise, shall have Power to inquire of Mayors and Ministers of Towns, if they do according to the Statute.

By the *St.* 12 *Car.* 2. 25. No Merchant, Vintner, Seller, or Retailer of Wine shall mingle or utter the same mixt with other Sort of Wine, Cyder, Perry, Stum, Honey, Sugar, Vitriol, Molasses, or any Syrup, Ifinglass, Brimstone, Lime, Raisins, Water, other Liquor or Ingredients, Clary or other Herb, or any Flesh, on Pain of 100*l.* to the Seller in Gross, and 40*l.* to the Retailer, a Moiety to the King, and a Moiety to the Informer.

By the *St.* 1 *W. & M.* 1 *Sess.* 34. If any sell by Gross, or Retail, any Wine corrupt or adulterated; or adulterate any Wine, he forfeits 300*l.* a Moiety to the King, a Moiety to the Informer.

The King cannot dispense with the Statutes against corrupting of Wine. *Vau.* 344.

(B. 99.)
Price.

• [Repealed
by the *St.* 21
Jac. 28.]

By the *St. de Pift. incerti Temporis* (*H.* 3 *Ed.* 1. or *Ed.* 2.) A Gallon of Wine shall be at 12*d.* and if Taverners exceed, their Doors shall be shut up by the Mayor and Bailiffs. * *Vide Keble's Statutes* 85.

By the *St.* 4 *Ed.* 3. 12. Wines shall be sold at reasonable Prices.

By the *St.* 28 *H.* 8. 14. No Wine *French* shall be sold above 8*d.* the Gallon, 4*d.* the Pottle, 2*d.* the Quart, 1*d.* the Pint; nor Sack or Sweet Wines above 12*d.* the Gallon, 6*d.* the Pottle, 3*d.* the Quart, and 1*d.* the Pint. And the Lord Chancellor, Treasurer, President of Council, Privy Seal, two Chief Justices, or three of them might set Prices of Wine sold in Gross by the Ton, &c. And after Proclamation none shall sell above, on Pain of 40*s.* for every Vessel, a Moiety to the King, and a Moiety to the Corporation, if in a Town Corporate, else to the Informer.

By the *St.* 7 *Ed.* 6. 5. No *Gascoigne* or *French* Wine shall be sold above 8*d.* the Gallon, nor *Rochelle* Wine above 4*d.* per Gallon, nor other Wine above 12*d.* per Gallon on Pain of 5*l.*

But by the *St.* 5 *El.* 5. A Retailer might sell at Prices, allowed by Proclamation issued with the Assent of such Lords, as by the *St.* 28 *H.* 8. 14. were to set Prices on Wines in Gross.

By the *St.* 12 *Car.* 2. 25. No Retailer shall sell Canary, *Spanish*, or Sweet Wines above 18*d.* per Quart, nor *French* Wine above 8*d.* per Quart, nor *Rhenish* above 12*d.* per Quart on 5*l.* Penalty. Provided the Lord Chancellor, &c.

between

between the 20th of *November* and the last of *December* may yearly set and alter the Prices of Wines; and then, not above those Prices.

By the *St. 1 W. & M. 1 Sess. 34.* After 10th *September*, 1690, None shall sell *French Wine* above 6*d.* per Quart, on Pain of 5*l.* for the first, and 10*l.* per Quart for every other Offence.

By the *St. 24 H. 8. 6.* If any refuse to sell Wine, at the Prices set for ready Money, he shall forfeit the Value of the Wine, unless he make Oath, he keeps not the same for Sale in Gros: And Justices, Mayors, &c. may on Request enter and sell the same.

The King cannot dispense with the Statutes, which limit the Prices of Wine. *Vau. 343. 4.*

At the Common Law, every one might sell Wine without Restraint. *R. (B. 100.) 1 Sid. 6. Hard. 344.* Wine Licence.

But by the *St. 7 Ed. 6. 5.* None shall retail Wine, but in Cities, Boroughs Corporate, Port, or Market Towns, on Pain of 10*l.* per Diem: Nor in Cities or Towns Corporate, unless appointed by the Head Officer, and most Part of the Common Council, Aldermen, Burgesses, or Commonalty there, by Writing under the Common Seal: Nor in a Market Town, unless licensed by the Justices of Peace at the General Sessions, by Writing under the Seals of the Majority, on Pain of 5*l.* who shall not license above two in any City, Town, &c. except those mentioned in the Statute.

Yet the King might dispense with any Person to retail Wine, notwithstanding that Statute. *Vau. 344, 346. R. 1 Sid. 6. Semb. Dy. 270. a.*

And King *James* the First granted to the Vintners of *London*, That every one Free of their Company, might sell Wine by Retail or in Gros, within the City and Suburbs, and three Miles of the Walls of the City, all Sea-Ports, and in Cities and Port Towns between *London* and *Dover*, and *London* and *Berwick*, notwithstanding the *7 Ed. 6.* which Grant is good. *R. Vau. 330, 348, &c. 359.*

By the *St. 12 Car. 2. 25.* The King may commission two or more, who may grant Wine Licences to whom they think fit, for a Term not above twenty-one Years, at a certain Rent, without Fine, which shall not be assignable; but they must use the Selling of Wine, or be Owner of the House.

Not to prejudice the Universities, or Company of Vintners.

By the *St. 15 Car. 2. 14.* The Duke of *York* and his Heirs Male had sole Power of Wine Licences, exclusive of the King: Saving the Privilege of the Universities, and Company of Vintners.

And by the Proviso in the Statutes of *12 Car. 2.* and *15 Car. 2.* The Company of Vintners have Power to sell Wine by Retail, &c. without Licence, as they might by the Charter 9 *Jac. R. Vau. 332.*

So they may sell by Retail without Licence of the Mayor, &c. in a Corporation, or of Justices of Peace in a Market Town; for the Clauses in the *St. 7 Ed. 6.* extend only to private Persons, not to Taverners. *Dub. Hard. 344.*

So, by the *St. 7 Ed. 6. 5.* That Act is not to prejudice either of the Universities, so as there be not more Taverns kept there than are provided for in the Statute, viz. *Oxford 3. Cambridge 4.*

So, by the same Stat. Persons, who by Licence may have a Tavern, may sell Wine by Retail in their Houses, without other Licence. *Per Hale and Atkins, 2 Barons cont. Hard. 345. Dub. Hard. 464.*

But a Licence to retail Wine, does not import a Licence to have a Tavern. *R. Hard. 348.*

[If a Wine-merchant sells a Gallon of Wine in his own House, which is drank in another in the same Town, he is a Retailer within *12 Car. 2. c. 25. Astell v. Andrews, M. 13 G. Str. 718. Ld. Raym. 1421.*]

[If a Merchant sells one Dozen Quart Bottles, unmeasured, it is retailing. *B. R. Haswell v. Chalie, P. 12 G. 2. And. 392. Str. 1124.* Reversed by the Lords, because one Dozen Quart Bottles was not found to be a retail Measure; venire de novo awarded. *Str. 1124.*]

Vide Leet, (L. 14.)

VOL. IV.

P P

(B. 101.)

(B. 101.) Default of Officers.

So Justices of Peace by their Commission may inquire of Sheriffs, Stewards, Bailiffs, Constables, Gaolers, and other Officers who are remiss in their Duty.

By the *St. 23 H. 6. 10.* Justices of Peace may inquire, &c. if the Sheriff let to Farm his County, or any of his Hundreds or Bailiwicks; or return Bailiffs or their Servants on any Pannel; or if he, his Under-sheriff, &c. refuse to bail those bailable, (*Vide Bail, (F. 5.)*) or take more Fees than allowed, (*Vide Extortion.*) for which they shall forfeit treble Damages to the Party and 40 *l.* a Moiety to the King, a Moiety to the Prosecutor.

By the *St. 11 H. 7. 15.* Justices of Peace, or any of them, may inquire if the Sheriff, Shire Clerk, &c. enter a Plaint in the Name of a Plaintiff not present in Person, or by Attorney; or enter more Plaints than one for the same Cause; or more than there is Cause of Action for; and if he be convicted on Examination, he shall forfeit 40 *s.* for every Default; which the Justices of Peace, on Pain of 40 *s.* shall certify into the *Exchequer*.

And such Justices of Peace, or any of them, (to be appointed for these Purposes at Michaelmas Sessions by the *Custos Rotulorum*, or Senior Justice of the *Quorum*) may inquire of Defaults, in Bailiffs not warning Defendants to appear in the County Court, or not doing their Office, who convicted, &c. forfeit 40 *s.* for every Default.

And the Sheriff, &c. shall make no Estreats to levy Amerciaments, till two Justices of Peace (one *Quorum*) have viewed their Books, and till an Indenture be made of such Estreats, under the Seals of the Sheriff and the said Justices; and that the Justices of Peace swear Bailiffs, not to levy more than contained in such Indenture, on Pain of 40 *s.* for every Default, &c.

By the *St. 42 Ed. 3. 9.* Justices of Peace may hold Suit, if the Sheriff, &c. levy the King's Debts, and do not shew the Estreats under the *Exchequer* Seal to the Party, and cause what is paid to be totted; who shall for Default pay treble Damages to the Party, and a Fine to the King.

And by the *St. 7 H. 4. 3.* The Justices, before whom Issues or Amerciaments are forfeit, shall charge the Clerk of the Estreats on Oath, to express in the Roll of Estreats the Cause, the Term, the Nature of the Writ, and Parties between whom such Estreats and Amerciaments were lost.

By the *St. 27 El. 7.* Justices of Peace may inquire, &c. of Sheriffs, &c. who return Jurors without proper Addition, or levy Issues of any not in right chargeable with them, who shall forfeit five Marks to the Queen, and five Marks to the Party grieved.

By the *St. 27 El. 12.* An Under-sheriff, Bailiff of Franchise, their Deputy or Clerk, or any who meddles with the Return of a Jury, or Execution of Process, shall before Justices of Assize, *Custos Rotulorum*, or two Justices of Peace (one *Quorum*) take the Oath of Supremacy, and an Oath not to use the Office corruptly, nor take more than due Fees on Return of an Enquest, &c. before he executes his Office, on Pain of 40 *l.* a Moiety to the Queen, a Moiety to the Prosecutor; and Offences contrary to the Act, or Oath, Justices of Peace may hear and determine, and award Process by *Fieri facias*, Attachment, *Capias*, or Exigent.

(B. 102.) Perjury; What shall be, and what not.

(B. 102.)
By the Com-
mon Law.

So, by the *St. 5 El. 9.* Justices of Peace may inquire of Perjury, and Subornation, contrary to that Statute.

Perjury was an Offence, punished upon Indictment, or Information, by the Common Law. 3 *Inst.* 163, 164. R. 12 Co. 102. 2 Cro. 8. 5 Mod. 342. *Vide Ante, (B. 1.)*

And therefore, if a Man committed Perjury, he might be punished by Information in the Star-Chamber. 12 Co. 101. Dub. Dy. 242. b.

As, if he take an Oath before him, who has lawful Authority to administer, and swear positively and fallly in a material Point. 3 Inst. 164. *Vide Serement.*

And Perjury shall be punished, tho' it be committed by a Witness for the King, in an Information against others. 12 Co. 101. 3 Inst. 164. R. per 2 J. 2 Cro. 212.

So Perjury in an Answer in *Chancery*, or *Exchequer*, shall be punished by the Common Law. 5 Mod. 348. 3 Inst. 166.

Or, in an Answer to Interrogatories. 5 Mod. 348.

Or, in an *Affidavit* in B. R. C. B. or *Chancery*, &c. 5 Mod. 348. *Sho.* 335, 397. *Per Coke*, 1 Rol. 79.

Or, upon a Wager of Law. *Noy* 128.

Or, upon a Commission for Examination of Witnesses.

Tho' the Examination was after the Commission determined by the Death of the King; if his Death was not known. R. Cro. Car. 99.

So, Perjury in a Court not of Record: As, in a Court-Baron. 5 Mod. 348. *Per Twissd.* 1 Mod. 55.

Or, an Ecclesiastical Court. 5 Mod. 348.

In an *Affidavit* made for obtaining a Licence of Marriage. 1 Vent. 370.

So it will be Perjury by the Common Law to swear a Thing not known by him, tho' it be not false. R. Pal. 294. 3 Inst. 166.

As, that A. in his Presence, revoked his Will, tho' he did it in his Absence. R. Het. 97.

But it will not be Perjury, if a Man take a false Oath before him, who has no lawful Authority to administer it. 3 Inst. 165, 166.

Or, before him, who has no Jurisdiction of the Cause. 3 Inst. 166. R. Yel. 111.

So it will not be Perjury, if the Oath be not direct and positive: As, if he say, *Ut meminit*, &c. 3 Inst. 166.

If an Answer in *Chancery* be false in a Thing, which is not said to be of his Knowledge, but of his Belief. R. 1 Sid. 419.

So it will not be Perjury, unless it be in a Point material to the Issue. 3 Inst. 167.

As, if it be asked, whether Payment was made for such Goods at one Time, and he says, it was; it will not be Perjury, if Payment was made, tho' not all at the same Time. R. 2 Rol. 41, 42.

If he swear, that he beat and wounded A. with his Sword, it is not Perjury if it was with a Stick; for all that is material, is the Battery and Wounding. R. Het. 97.

But it is sufficient, if it be in any Degree material: As, if he be perjured directly in his Answer in *Chancery*, tho' it be in a Matter not charged by the Bill. 5 Mod. 348. *Semb.* 1 Sid. 274, 106.

If he be perjured in his Testimony, as to the Credit of a Witness. R. Sal. 514.

But a Man shall not be indicted for Perjury, for Breach of an Oath of his Office: As, a Judge, Sheriff, Bailiff, or other Officer.

So he shall not be indicted for Perjury, if the Matter be explained by another Part of the Answer, *Affidavit*, &c.

Or, by a subsequent Answer. 1 Sid. 419.

So, by the St. 5 El. 9. A Person, who procures any Witness to commit wilful and corrupt Perjury, in any Cause depending by Writ, Action, Bill, Plaint, or Information in *Chancery*, Star-Chamber, or any Court of Record, Leet, Frankpledge, *Antient Demesne*, Hundred, Court-Baron, or Court of Stannaries, or a Witness in *perpetuam rei Memoriam*, shall forfeit 40*l.* or suffer Imprisonment for half a Year, and stand in the Pillory an Hour in full Market, and be disabled to be a Witness, &c. (B. 103.) By the St. 5 El. 9.

And a Person, who by Subornation, or his own Act, commits wilful Perjury, &c. shall forfeit 20*l.* and be imprisoned for six Months, and be disabled to be a Witness;

Witness: And if he have not 20^l. to be set on the Pillory in a Market-Place, &c. and have his Ears nailed, and be disabled to be a Witness; a Moiety of the Forfeitures to the Queen, a Moiety to the Party grieved, &c.

And upon this Statute the Party grieved shall have his Action. 3 *Bul.* 147.

Persons grieved ought not to join in the Action another, who does not appear to be aggrieved. *Per* 2 *J.* 2 *Leo.* 12.

So the Declaration is not good, unless it describes the Lands, in regard of which the Perjury was committed. 2 *Leo.* 12.

The Plaintiff may sue for a manifest Perjury, as the Party grieved, though the Verdict be for him. *Ley* 66, 7.

So an Action for Perjury lies against a Jew, tho' sworn upon the *Pentateuch* only. 2 *Keb.* 314.

* [Cont per
Windham of a
Psalm Book
only.]

Or a Witness sworn upon the Book of Common Prayer, having the Gospels and Epistles. 2 *Keb.* 314. *

A Person will be perjured within the *St.* 5 *El.* 9. if he swears falsely and positively in any Trial, to the Proof of the Point in Issue.

Or, to a Circumstance, which conduces to the Proof of the Issue, tho' it never was material, whether such Circumstance were true: As, that the Beasts of *B.* were in such a Close, because they have such a Mark; where *B.* never used such Mark. *Per* 2 *J.* *Dod. cont.* *Pal.* 535. 2 *Roll.* 368.

But a Man is not punishable by this Statute, if he perjure himself in an Answer in *Chancery*, or the *Exchequer*, for it extends only to Witnesses. 3 *Inst.* 166.

In an Answer by a Defendant to Interrogatories in the Star-Chamber. *R. Yel.* 120. *Cro. El.* 148.

Or, in a Deposition for one, who is a Party to the Cause *a Latere*. As, where a Man comes in upon *Aide prier*. *Dub. Yel.* 22.

Or, is added as a Party by Order in *Chancery*, upon a Bill between other Persons. *R. Yel.* 22.

So, if the Perjury be in the Spiritual Court; for it is excepted by the *St.* 5 *El.* 9.

(B. 104.)
How it shall
be punished.
By Indict-
ment.
Vide Action by
the Party.
grieved Ante
(B. 103.)

Perjury was indictable by the Common Law.

And an Indictment lies for it in *B. R.* tho' the Perjury was in another Court. *R. Pal.* 294. 2 *Roll.* 244.

So an Indictment, &c. lies against a Witness for Perjury, tho' the Party be convicted upon his Evidence. *Ley* 69.

But an Indictment does not lie, upon the *St.* 5 *El.* 9. for Perjury by a Witness, who deposes for the King, in an Information by the Attorney-General in the *Exchequer*. *R.* 2 *Cro.* 120. *Adm.* 2 *Cro.* 212.

Or, upon an Indictment. *R.* 5 *Co.* 99. *a.*

So an Indictment does not lie upon the Statute, for Perjury in his own Cause: As, upon a Wager of Law. *R. Noy* 128.

So it does not lie, where the Perjury was not as a Witness, or in *perpetuam Rei Memoriam*: As, if Perjury be committed in an Answer and upon an Examination to Interrogatories in the Star-Chamber. *R. Cro. El.* 148. *Yel.* 120. *Vide Ante*, (B. 103.)

If the Perjury be in a Court of *Westminster*, and the Party confess it; his Confession being recorded, he may be set in the Pillory, without Indictment. 2 *Mod. Ca.* 179.

Tho' the Perjury was in *C. B.* &c. 2 *Mod. Ca.* 179.

An Indictment for Perjury ought to shew, that it was done *voluntarie*. *R. Sho.* 190. 3 *Inst.* 167.

It ought to shew the exact Breach: And therefore, an Indictment for Swearing, that *A.* acknowledged that he was treated at *N. ubi revera A.* did not acknowledge, that he was treated at the City of *N.* is not a good Breach. *R. Sho.* 335.

That *A.* suborned *B.* to take an Oath, that such a one was present at a Conventicle; without saying, that *B.* swore so. *Semb.* 3 *Mod.* 122.

If

If the Perjury be at a Trial, it must shew, what was the Issue, and how the Evidence tended to the Issue. *R. Cro. El. 148. 2 Rol. 429.*

If the Perjury was before a Commissioner of the Chancery, it must shew the Commission under the Great Seal, so that there was a Power to take the Oath. *R. 2 Rol. 429.*

So there ought to be the same Certainty in an Information at Common Law, as upon the Statute. *Sal. 514.*

The Indictment ought to shew, whether he committed the Perjury by Subornation, or of his own Accord. *3 Inst. 167.*

And shall say, *falso voluntarie & corrupte dixit*; for a Conclusion, *Et sic commisit voluntarium & corruptum Perjurium*, is not sufficient. *3 Inst. 167.*

[On Perjury in an Answer in Chancery, it is not necessary to prove the Identity of the Person who swore it; nor that any Person swore it; it is sufficient if his Hand-writing is proved, and that the Master proves that the *Jurat.* was subscribed by him (the Master) as being sworn before him. *Rex v. Morris, T. 1 G. 3. 2 B. M. 1189.*]

[By *St. 23 G. 2. c. 11*: In Information or Indictment, it is sufficient to set forth the Substance of the Offence, and before what Court or Person, with Averment of the Authority to administer Oath, and Averment to falsify the Matter wherein Perjury is assigned; without setting forth the Proceedings or the Authority.]

[So for Subornation.]

[Justices of Assize may order a Witness to be prosecuted; and assign Counsel; and the Prosecution shall be without Tax, Duty or Fee.]

As to Action upon the Statute. *Vide Ante*; (B. 103.)

So an Indictment lies for Subornation. *Vide Ante*, (B. 104.)

So, for giving 350*l.* to A. to prove a Writing given in Evidence for another to be forged; for it tends to Subornation. *R. 2 Sho. 1.*

(B. 105.)
Indictment
for Subornation.

For the Judgment upon an Indictment, or Information for Perjury at the Common Law, *Vide 3 Inst. 163.*

By Consequence of the Judgment upon an Indictment or Information for Perjury at the Common Law, the Party shall be disabled from being a Witness, till he be pardoned. *Sal. 514. Vide Testmoigne, (A. 4.)*

(B. 106.)
What Judgment for Perjury.

In an Indictment, or Information for Perjury, upon the Statute, the Judgment shall be to forfeit 20*l.* and be imprisoned for six Months without Bail or Mainprize, and his Oath from thenceforth not to be received in any Court of Record, until the Judgment shall be reversed. And if the Offender have not Goods or Chattels to the Value of 20*l.* then to be set on the Pillory in a Market Place, within the Shire, &c. and to have both his Ears nailed, and from thenceforth to be discredited and disabled for ever to be sworn in any Court of Record, until the Judgment be reversed. *Vide the St. 5 El. 9.*

And the Disability of being a Witness, being Part of the Judgment, cannot be pardoned; nor shall the Party be restored, but by Reversal of the Judgment. *Sal. 514.*

But Judgment shall not be given, unless the Party be present in Court. *Skin. 684.*

Tho' he be outlawed for it; for a *Capias* ought to issue, upon which he shall be brought into Court. *Ibid.*

(B. 107.) Conspiracy.

Justices of Oyer and Terminer have Authority to inquire of Confederacies. *Sal. 174.*

And therefore, an Indictment lies for a Conspiracy of indicting for any Offence Temporal or Ecclesiastical falsely, tho' nothing be done in Execution of the Conspiracy. *R. 1 Sal. 174.*

As, for conspiring to charge a Man with being Father of a Bastard. *R. 1 Sal. 174.*

Tho' it does not aver, that he is innocent, for it shall be intended, where he charges falsely. *1 Sal. 174.*

[One Conspirator may be convicted after the other is dead, or before he has pleaded. *Rex v. Niccols, P. 18 G. 2. Str. 1227.*]

[If several Persons, in order to get the Rewards for apprehending Highwaymen, agree that one of them shall procure a Man to rob another of them, which is done, they may be indicted, and on Conviction sentenced to stand in the Pillory twice, to be imprisoned seven Years, and till they find Sureties for three Years more. *Macdaniel's Case, 121. T. 1755. Foster 121.*]

[Indictment for a Conspiracy falsely to accuse a Man of taking Hair out of a Bag, the Goods of *A.* and exacting Money and Notes from him, as a Composition for not prosecuting, lies before Quarter-Sessions; for a Conspiracy is a Trespass, and tends to the Breach of the Peace. *Rex v. Rissal, T. 2 G. 3. 3 B. M. 1320.*]

[Such Indictment is good, though it does not say, taking unlawfully or feloniously. *Ibid.*]

(B. 108.) In what Cases Justices of Peace have no Authority.

Vide Ante, (B. 1, 3.)

(C.) Conviction by Justices of Peace.

(C. 1.) In what Cases necessary.

IF a Statute inflicts a Penalty, for an Offence to be determined by one or more Justices of Peace out of Sessions, there must be a Conviction for the Offence before the Penalty levied.

[Upon the Statute of Hawkers and Pedlars. *Rex v. Beck, M. 5 G. Strange 127.*]

And such Conviction ought to be made in due Form.

(C. 2.) In what Manner.

(C. 2.) A Conviction ought to be made in the Manner the Law requires. *Vide Ante, (B. 47.)*

There must be
a Summons
to the De-
fendant.

And therefore the Defendant must be summoned before he be condemned.

[Defect in the Summons is cured by the Defendant's Appearance. *Rex v. Johnson, M. 6 G. Str. 261.*]

If the Conviction does not shew the Defendant to be summoned, it shall be quashed. *Mod. Ca. 41.*

So, if it does not shew a Summons at a possible Day: as, if he says, Whereas *A.* was summoned to appear, and did appear on Tuesday 17th April, where the 17th April was Friday. *R. 1 Sal. 181. Mod. Ca. 41.*

And where the Day mentioned for Appearance is impossible, his Appearance upon another Day shall not be intended. *1 Sal. 181. Mod. Ca. 41.*

[If the Summons, Appearance and Conviction, be laid to be on a Day prior to the Information and Examination of the Witness, it is bad. *Rex v. Kent, M. 2 G. 2. Ld. Raym. 1546.*]

[In Convictions the Evidence must be set out. *Rex v. Theed, M. 5 G. 2. Str. 919. Rex v. Lloyd, M. 8 G. 2. D. Per Hardwicke C. J. It is fully settled. Str. 996. Rex v. Bryan, H. 11 G. 2. Andr. 81. Rex v. Vipont, T. 1 G. 3. 2 B. M. 1163.*]

[So, 'tis not sufficient to say "the Charge as set forth being proved on Oath of *A.* and *B.*" *Rex v. Killet, P. 7 G. 3. 4 B. M. 2063.* In Orders it is not necessary.]

[If

[If the Conviction sets forth, that the Evidence was read unto, and fully understood by Defendant, it is sufficient. *Rex v. Baker, M. 19 G. 2. Str. 1240.*]

[The Evidence must be given in Defendant's Presence, unless he confesses. *Rex v. Vipont, P. 1 G. 3. 2 B. M. 1163.*]

[There must be a Judgment in the Conviction. *Ibid.*]

Omission of Proof to shew the Offence within a Statute shall not be helpt, by the Conclusion of the Conviction, *contra formam Statuti. Dub. Skin. 562.*

[If the Defendant is convicted on the Evidence of the Informer who is intitled to Part of the Penalty, it is bad. *Rex v. Tilly, T. 6 G. Str. 316. Rex v. Piercy, T. 10 & 11 G. 2. Andr. 18. Rex v. Blaney, T. 11 & 12 G. 2. Andr. 240.*]

[If the Statute requires that the Conviction be by Justices of the County where the Offence was committed, it must appear on the Conviction, or it will be quashed. *Ibid. Rex v. Johnson, M. 6 G. Str. 261.*]

[If it appears on the Conviction, that the Witness swore generally, that the Defendant was guilty of the Premises, it is bad; for he took on himself to swear the Law. *Rex v. Baker, T. 6 G. Str. 316.*]

[A Conviction shall be presumed to be right, if it does not appear to be wrong; as if one is convicted for obstructing an Excise-officer, the Court will presume it was in the Day-time. *Rex v. Theed, M. 11 G. 2 Ld. Raym. 1375. Str. 608.*]

[Proceedings upon Convictions must be in the present Tense. *Rex v. Roberts, M. 11 G. Str. 608.*]

[In Convictions for Nonpayment of Money (as Collector of a Turnpike) the Sum, and Times when received, must be mentioned. *Rex v. Catherall, P. 4 G. 2. Str. 900.*]

[An Excuse in a Proviso need not be taken notice of in a Conviction; but if it is in an enacting Clause, it must. *Rex v. Bryan, M. 12 G. 2. Str. 1101. Andr. 289.*]

[In Convictions on negative Acts of Parliament, the particular Qualifications mentioned in the Purview of them must be negatively specified in them; as on the Game Laws, all the Qualifications mentioned in 22 & 23 C. 2. *Rex v. Jarvis, H. 30 G. 2. 1 B. M. 148.*]

[Convictions ought to be construed with Strictness, because they must be taken to be true against Defendant. *Rex v. Little, T. 31 G. 2. 1 B. M. 609. Rex v. Corden, H. 9 G. 3. 4 B. M. 2279.*]

[There must be an Averment of the Crime. *Ibid.*]

[If the Information is that *A.* was found trading as a Hawker, and offered to Sale, &c. and *A.* confesses he offered to Sale in *such Manner* as is mentioned, this is not sufficient; he must confess that he traded as a Hawker, &c. *Ibid.*]

[A Conviction for trading as a Hawker *without having* a Licence, in which the Evidence stated is, "that he *refused to produce* a Licence," is good. *Rex v. Smith, P. 4 G. 3. 3 B. M. 1475.*]

[Conviction of a Hawker is good, though it doth not appear that he was summoned, that the Witness was examined in his Presence, and though he does not swear him to be a Hawker at the Time of Conviction, if it is set forth that he appeared and denied the Guilt, and desired no further Time, and that he exposed Goods to Sale two Days before the Conviction. *Rex v. Aiken, M. 6 G. 3. 3 B. M. 1785.*]

[A Conviction on 5 G. 3. c. 14. for preserving Fish, must be on Complaint of the Owner, or he must shew his Dissent to the Fishing, the Property must be proved on Oath. Confession of the Offence does not supply these. *Rex v. Corden, H. 9 G. 3. 4 B. M. 2279.*]

[*Feme covert* may be convicted for a Crime which can be committed by her alone, as for selling Gin contrary to 9 G. 2. c. 23. *Rex v. Crofts, M. 13 G. 2. Str. 1120.*]

[A Justice ought to give Defendant a Copy of Conviction, if he demands it: It is a Record, and he is intitled to it. *Rex v. Midlam, T. 5 G. 3. 3 B. M. 1720.*]

[If an Order is good in Substance, it is sufficient, and it need not be literally so strict as an Indictment; thus an alternative Charge as aiding in removing

JUSTICES OF PEACE.

or concealing Goods, (on *Stat. 11 G. 2. c. 19.* is good. *Rex. v. Middlehurst, T. 30 & 31 G. 2. 1 B. M. 399.*)

[An Order against a Man for aiding in removing or concealing Goods, is good, though it doth not state that the Tenant removed them. *Ibid.*]

(C. 3.) Remedy upon an Undue Conviction.

A Justice of Peace is a Judge of Record; and if he acts within his Jurisdiction pursuant to a Statute, his Judgment on Conviction shall not be avoided by *B. R.* nor the Party in Execution upon it set at large. *Jon. 171.*

But if a Justice of Peace does not pursue the Statute, his Proceeding is void, and *coram non Judice*, and there shall be Redress by *B. R.* upon Removal of the Conviction or Order before them by *Certiorari*. *Ibid.*

And that, without Writ of Error, *Ibid.*

(D. 1.) Sessions of Justices of Peace.

JUSTICES of Peace may hold their Sessions for the Administration of Justice within their Precincts. *Vide Dalt 650. c. 185.*

And their Sessions are Petit, General, or Quarter Sessions.

An Assembly of two Justices, or more, (*Quorum unus*,) not only for Inquiry, but also to hear and determine, makes a Session. *Lamb. 373, 374. l. 4. c. 1.*

Tho' the Quarter Session is a General Session, yet there may be a General Session of the Peace at a different Time. *Lut. 911.*

The whole Session is but one Day in Law. *Sal. 607.*

And if it be said to be held the 20th and 27th of *October*, it will be bad. *R. Sal. 605.*

Persons *eundo & redeundo* to and from Sessions have the Privilege of not being arrested. *Semb. 1 Lev. 159.*

And if such Person be arrested *in Facie Curiae*, the Court will discharge him. *R. 1 Brownl. 15.*

But if the Arrest be not *in Facie Curiae*, the Court cannot discharge him. *1 Brownl. 15. Semb.* where the Writ of Privilege of a *Custos Rotulorum* was pleaded to an Action for an Escape, and held a bad Plea. *Ray 100.*

(D. 2.) At what Time held.

By the *St. 12 R. 2. 10.* Justices of Peace shall keep their Sessions in every Quarter of the Year at least, and for three Days, if need be.

And therefore, by the *St. 2 H. 5. 4.* in the first Week after the Feast of *St. Michael*, the first Week after the *Epiphany*, the first Week after the Clause of *Easter*, and the first Week after the Translation of *St. Thomas* the Martyr, and oftner, if need be.

But by the *St. 14 H. 6. 4.* The Justices in *Middlesex* need hold their Sessions but twice a Year.

(D. 3.) How summoned.

If a sufficient Number of Justices of Peace and others assemble, they may hold a Session, tho' not summoned by Precept. *Lamb. 375, 376. l. 4. c. 2.*

But the regular Course is, that it be summoned by a Precept of two Justices. *Lamb. 375. l. 4. c. 2.*

Otherwise, none ought to be punished for Default of Appearance. *Lamb. 376. l. 4. c. 2.*

And a Precept by one Justice is not sufficient, tho' it be by the *Custos Rotulorum*; for he has no other Authority for this Purpose than as a Justice of Peace. *Lamb. 377. l. 4. c. 2.*

And a Precept by two Justices cannot be superseded by other Justices of Peace. *Lamb. 378. l. 4. c. 2.*

Yet if two Justices make a Precept for a Session, two others may make a Precept for a Session at another Place. *Lamb.* 379. l. 4. c. 2.

And the Proceedings at both Places are good, for they are of equal Authority. *Ibid.*

The King may make a *Superfedeas* to a Precept of two Justices of Peace. *Crom.* 7. 107. b. (*Vide Lamb.* 378. l. 4. c. 2.)

And it may be directed to the Justices, or to the Sheriff. *Crom.* 7. 107. b.

[If the Sessions is once dropt and not adjourned, it cannot be resumed. *Rex v. West Torrington*, T. 22 & 23 G. 2. B. S. C. No. 105. *Rex v. Polsted*, H. 20 G. 2. Str. 1263.]

(D. 4.) Who ought to attend.

By the Commission in a County, the *Custos Rotulorum* ought to attend at the Sessions with Records, &c.

(D. 4.)
*Custos Rotu-
lorum.*

By the St. 37 H. 8. 1. Reciting, that the Lord Chancellor by reason of his Office had the Appointment of the *Custos Rotulorum* in every Shire, &c. No Person shall be appointed, but such as hath a Bill signed by the King, to whom the Chancellor shall make a Commission to be *Custos Rotulorum*, till the King assign another by Bill, &c. to hold by himself or sufficient Deputy learned in the Law.

But by the St. 3 & 4 Ed. 6. 1. The Lord Chancellor, &c. may appoint the *Custos Rotulorum* to exercise by himself or Deputy, as before 37 H. 8. without Bill signed by the King.

Provided the Archbishop of York, Bishops of Durham, Ely, Chancellor of the Duchy of Lancaster, or any Corporation, or other who have Authority by Patent, or otherwise, to constitute a *Custos Rotulorum* for any Place, may still do so.

And there was the same Proviso in the St. 37 H. 8. 1.

And now, by the St. 1 W. & M. 21. S. 4. The *Custos Rotulorum* shall be appointed as directed by the St. 37 H. 8. 1.

After Justices of Peace were made Judges of Record by the St. 34 Ed. 3. 1. it was convenient, that the King should appoint one in the Commission, to have the Custody of the Rolls and Records of the Court, who is the *Custos Rotulorum*. *Per Holt Sbo.* 528.

And thereupon, the Chancellor *virtute Officii*, without other Warrant, makes a Commission or Grant to him to be *Custos Rotulorum*, which was virtually the Appointment of the King, for the Commission was in the King's Name. *Per Holt Sbo.* 529.

But all the Records of the Sessions of the Peace are, in Reputation of Law, in the Custody of all the Justices; and a *Certiorari* to remove any of them is directed to the Justices generally. *Per Holt Sbo.* 528, 529.

And the King shall not make a Person, not in the Commission, *Custos Rotulorum*. *Sbo.* 529.

By the St. 37 H. 8. 1. Reciting, that the *Custos Rotulorum* used to appoint the Clerk of the Peace, &c. The *Custos Rotulorum* shall in every Shire appoint such able Person, instructed in the Law, as shall be fit for the Office, during such Time as he continues *Custos Rotulorum*, so he demean himself justly, &c. to exercise by him, or his Deputy learned in the Law, and admitted as such by the *Custos Rotulorum*.

(D. 5.)
Clerk of the
Peace.

And by Common Equity, the *Custos Rotulorum*, having the Custody of the Records, ought to appoint the Clerk with whom they shall be intrusted. *Per Holt Sbo.* 530.

By the St. 1 W. & M. 21. S. 5. The *Custos Rotulorum* shall appoint a Clerk of the Peace, able and residing in the same County, to execute the Office by himself, or sufficient Deputy, and to receive the Fees, &c. as long as he shall well demean himself in the said Office.

And therefore, a *Custos Rotulorum* having made a Clerk of the Peace since this Statute, he has the Office for Life *quamdiu se bene gesserit*. *R. Tr.* 5 W. & M.

Harcourt and Fox, and afterwards affirmed in Parl. 1 Sho. 427, 506, 516, 536. (Vide Sho. 556.) Ca. Parl. 163, 4. 4 Mod. 167.

And the *Custos Rotulorum* cannot make him for Years, or *durante bene placito*, or for the Continuance of his Office. *Per Holt Sho. 535.*

He may be made without Deed; for the *Custos Rotulorum* has but a Nomination. *R. Sal. 467.*

But by the *St. 1 W. & M. 21. S. 6.* If a Clerk of the Peace misdemean himself in his Office, and a Charge in Writing of his Misdemeanors be exhibited to the Justices at the General Quarter-Sessions, on Examination and due Proof openly in the Quarter-Sessions, they may suspend or discharge him; and the *Custos Rotulorum* may appoint another; or if he refuse to do so before next Quarter-Sessions, the Justices of Peace at their General Quarter-Sessions may do so.

And if the *Custos Rotulorum* sell, or take Bond, &c. for any Reward, &c. directly or indirectly to himself, or any other, for his appointing such Clerk of the Peace, both shall forfeit double the Value of the Sum given, and are disabled to hold their Offices. And the Clerk of the Peace shall in open Sessions swear, that he hath not, nor will give any such Reward, &c.

And therefore, where he extorts in his Fees, or commits other Misdemeanor in his Office, Articles may be exhibited against him before the Justices at the Quarter-Sessions, and upon Proof of them in a Summary Way, he shall be suspended or discharged. *Mod. Ca. 192.*

And the Forfeiture shall not be purged, by Surrender of his Office to the *Custos Rotulorum*, and taking a new Grant. *Mod. Ca. 193.*

And if he be suspended or discharged by the Justices, the *Custos Rotulorum* cannot make a Grant to the same Person. *Per Holt Mod. Ca. 193.*

If he be charged before the Justices at Quarter-Sessions, and the Matter is adjourned to another Sessions, he may be there convicted, tho' the same Justices were not then present. *Mod. Ca. 192.*

So, if a Clerk of the Peace refuse the Delivery of the Rolls to the *Custos Rotulorum*, he may be indicted, and, after Conviction, removed, and shall not be restored by *Mandamus*. *Per 3 J. Holt cont. 4 Mod. 32.*

But without Articles, or Complaint in Writing, he cannot be removed. *R. Sho. 282.*

And the Facts, alledged by the Articles, must be charged with the same Certainty, as in an Indictment. *R. Mod. Ca. 192.*

And if the Conviction be, for Causes not charged with Certainty, or not chargeable against him as a Misdemeanor in his Office, it may be removed by *Certiorari*, and quashed in *B. R.* *Mod. Ca. 192.*

Yet, after a Conviction quashed, he may be charged *de Novo*. *Per Holt Mod. Ca. 193.*

[When Clerk of the Peace is removed by Quarter Sessions, on *1 W. & M. c. 21.* it is not by Conviction, but by Order, and the Evidence need not be set out. *Rex v. Lloyd, M. 8 G. 2. Str. 996.*]

(D. 6.)
Sheriff.

By the Commission the Sheriff shall attend at the Sessions; and so it is commanded him by the Precept made to summon the Sessions. (*Vide Lamb. 377. l. 4. c. 2.*)

(D. 7.)
Coroners,
Stewards,
Constables,
Bailliffs.

By the Precept for summoning the Sessions, it is commanded to the Sheriff, *Quod scire faciat omnibus Coronatoribus, Seneschallis, Constabulariis, Sub-Constabulariis, & Ballivis, quod sint tunc ibi, &c.* (*Vide Lamb. 377. l. 4. c. 2.*)

And if they do not appear, the Justices of Peace may amerce them. (*Vide Lamb. 391. l. 4. c. 3.*)

(D. 8.)
Jurors.

By the Precept it is commanded to the Sheriff, *quod venire faciat tam 24 probos & legales homines de quolibet Hundredo, quam 24 milites & alios probos & legales homines de Corpore Comitatus, &c.* (*Vide Lamb. 377. l. 4. c. 2.*)

By the *St. 3 H. 8. 12.* Pannels returned for the Body of the County at open Sessions, &c. may be reformed by the Justices of Peace, by adding to or taking from

from the Pannel; and the Sheriff shall return the Pannel so reformed, on Pain of 20*l.* a Moiety to the King, a Moiety to the Prosecutor.

By the *St. 11 H. 4. 9.* Indictments shall be by Inquests returned by the Sheriff, &c. without Nomination of the Party or any Person, of which none shall be outlawed, or fled to Sanctuary for Treason or Felony.

(D. 9.) Proceedings there.

At the Sessions, Offences shall be prosecuted by Presentment, Information, or Indictment.

If a Statute gives a Penalty, to be recovered before Justices of Peace, without saying, in what Manner, it must be by Bill. *Per Holt Sal. 606.*

[Where Quarter Sessions have not original Jurisdiction, Consent of Parties cannot give it to them. *Rex v. Hartshorn, H. 32 G. 2. 2 B. M. 745.*]

[The Sessions of a City have Jurisdiction to hear and determine Indictments on 5 *Eliz. c. 4.* *Rex v. Strong, H. 30 G. 2. 1 B. M. 251.*]

[If on an Indictment for Trespais, the *nec non ad diversas felonias transgressiones, &c. audiend. & terminand. assign.* be omitted, it does not appear that they have any Jurisdiction, and the Indictment will be quashed. *Rex v. Carter, T. 7 G. Rex v. Straw. H. 10 G. Str. 442.*]

[They have a Right of Judging, upon Appeal, with the same Latitude of Discretion as the two Justices had. *Rex v. Gayer, H. 30 G. 2. 1 B. M. 245.*]

[They need give no Reason in their Orders, and it shall be presumed they acted on proper Grounds; if they express their whole Reasons, and they are bad, their Order is bad; but though the Reasons set forth are bad, yet if the Court is not obliged to judge them their whole Reasons, it will presume they had others, and good ones, and their Order is good. *Ibid.*]

[In all Orders of Sessions, the Commencement must be shewn, but there is no Necessity of setting out all the particular Adjournments. *Rex v. Middlesex, H. 11 G. 2. Andr. 101.*]

[An Order made at an adjourned Sessions must shew, that the Sessions commenced within the Time prescribed by the Act. *Saint Michael Norwich v. Saint Matthew Ipswich, P. 2 G. 2. Str. 831.*]

[So on an Indictment; which, for want of it, shall be quashed. *Rex v. Saunders.* Or Judgment on it arrested after Verdict, *Rex v. Fisher, P. 3 G. 2. Str. 865.*]

[The Sessions, on an Appeal, must make a direct and final Judgment themselves, and cannot refer it to the Judges of Assize. *Rex v. Reading, M. 8 G. 2. B. R. H. 79.*]

[But they may adjourn the Determination by a proper Adjournment. *Ibid.*]

[But if the Order of Sessions only refers the Matter to the Judges of Assize, who decline intermeddling, and the Sessions afterwards make an Order, it is void, as not being a proper Adjournment. *Ibid.*]

[On Indictment, where they proceed as a Court of Record at Common Law, they must make regular Continuances; but *Semb.* on Orders, it is not necessary. *Ibid.*]

[In Orders, "Whereas a Presentment has been made to us, whereby it appears, to us," is sufficient. *Rex v. Middlesex, H. 11 G. 2. Andr. 101.*]

[Have original Jurisdiction to discharge Apprentices, but the Order must set forth, that the Master appeared or was summoned. *Rex v. Gill, H. 5 G. Str. 143.*]

[Cannot set aside Assignment of an Apprentice bound out by the Justices. *Rex v. Barnes, E. 3 G. Str. 48.*]

If Justices at Sessions issue a Warrant for taking any one, it must be shewn, that the Sessions continued by Adjournment till the Taking. *R. 2 Lev. 229.*

As to Presentment. *Vide Indictment, (B.)*

(D. 10.)
Presentment.

As to Information. *Vide Title Information.*

(D. 11.)
Justices Information.

(D. 12.)
Indictment.
Vide Title
Indictment.

Justices of Peace may take Indictments of all Things within their Commission, or within the Statutes of which they can inquire. *Vide Ante*, (B. 1.)
But Indictments of Things out of their Cognizance they ought to reject. *Vide Ante*, (B. 1.)

By the *St. 1 Ed. 4. 2.* Justices of Peace shall proceed on Indictments and Presentments taken at the Sheriffs Turn, and delivered over to them.

But not upon an Indictment taken before a Coroner, Justices of Oyer and Terminer, or others, except themselves or other Justices of Peace, or in the Sheriff's Turn.

(D. 13.)
Traverse.
Vide Indictment, (L.)

A Traverse before Justices of Peace shall not be tried the same Day, as it may before Justices in Eyre, or Gaol-Delivery. *R. Jon. 379. R. Cro. Car. 438, 448. Cont. 2 Cro. 404. (Vide 2 Inst. 568.)*

Justices of Peace cannot try it the same Day, unless by Consent. *R. 1 Sid. 99. 334.*

But Justices of Oyer and Terminer, as well as of Gaol-Delivery, may try it the same Day, without Assent. *R. 1 Sid. 335. 2 Inst. 568. 4 Inst. 164.*

So Justices of Peace in Capital Cases, where the Offender is in Custody. *Semb. per Cur. but the Reporter makes a Quare. 1 Sid. 335. Acc. 2 Inst. 568. 4 Inst. 164.*

(D. 14.)
Arraignment.
Vide Indictment, (M.)

Justices of Peace may arraign Felons. *(Vide Dalt. 653. c. 185. Lamb. 541, 542. l. 4. c. 14.)*

And issue a *Venire facias* returnable at the same Session. *(Vide Lamb. 543. l. 4. c. 14. — Vide also Dalt. 654. c. 185. Semb. cont. as to Justices of Peace, but Acc. as to Justices of Gaol-Delivery.)*

And grant their Clergy. *Lamb. 543. l. 4. c. 14.*

By the *St. 34 H. 8. 14.* Justices of Peace may write to the Clerk of the Crown in R. R. to certify an Attainder, Outlawry, or Conviction; which he shall do without Delay, on Pain of 40s.

But they cannot deliver the Gaol by Proclamation, as Justices of Gaol-Delivery. *Lamb. 542. l. 4. c. 14.*

Nor take an Appeal. *Lamb. 542. l. 4. c. 14.*

Nor award a *Venire facias Matrones*, if a Woman be *enseint*. *(Vide Lamb. 543. l. 4. c. 14. Dub.)*

(D. 15.)
Judgment,
Execution,
&c.
Vide Indictment, (N.)

If a Man be convicted before Justices of Peace, for a Trespass, Riot, &c. where no certain Penalty is inflicted by Statute, he shall be fined at the Discretion of the Justices.

But by *Mag. Ch. 9 H. 3. 14. Nullus liber homo amercietur, nisi secundum modum Delicti illius, salvo Contentamento, &c.*

And by the *St. 1 W. & M. 1. Sess. 2.* No excessive Fines shall be imposed, nor unusual Punishments inflicted.

If a Man be convicted before Justices of Peace for an Offence, upon which a certain Penalty is inflicted, the Justices must pursue the Statutes in their Judgments; and cannot alter or mitigate it upon Confession.

And if treble Damages, &c. are given to the Party, the Justices of Peace may assess them. *Adm. Cro. Car. 448.*

But they ought first to inquire by a Jury of the Damages, and then give treble the Damages found. *R. Cro. Car. 448, 9.*

If the Defendant be present, he shall be imprisoned till Payment of the Fine. *2 Cro. 404.*

If he be absent, a *Capias pro Fine* shall issue; and so to an Outlawry.

By the *St. 51 H. 3. de Scacc.* All Justices, Commissioners and others shall deliver into the Exchequer at Michaelmas, all Estreats of Fines and Amerciaments taxed before them; which seems to extend to Justices of Peace.

But by the *St. 14 R. 2. 11.* Justices of Peace shall make Duplicates of their Estreats, and deliver one Part to the Sheriff to levy the Money, &c.

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If a Fine be imposed without Cause, B. R. upon a *Certiorari* may discharge it. R. 1 Vent. 336.

If it be excessive, B. R. may mitigate it. D. 1 Vent. 336.

By the St. 34 H. 8. 14. The Clerk of the Peace shall certify into B. R. all Attainders, Outlawries, and Convictions before Justices of Peace within forty Days after; or if not in Term, in twenty Days of the next Term, on Pain of 40s.

By the St. 21 H. 8. 11. Justices of Peace may grant a Writ of Restitution for stolen Goods, if the Felon be convicted before them, by the Evidence, or Procurement of the Owner, or Party robbed.

JURISTICIARY.

Vide Scotland, (D. 11.)

JUSTICES.

Vide Country, (C. 5.)—*Quod Permittat*, (D. 1.)

JUSTIFIABLE HOMICIDE.

Vide Justices, (M. 20.)

JUSTIFICATION.

Vide Imprisonment, (H. 8, 9.)—*Pleader*, (E. 15.—F. 19.—G. 4.—O. 6.—2 L. 3, &c.—3 M. 15, &c.)—3 O. 11, &c.)

KEEPER.

Lord Keeper.

Vide Chancery, (B. 1.)

K I N.

Vide Administration, (H.)—*Baron and Feme*, (B. 4.—C. 2.—Discent, (C. 1, &c.)

K I N G.

Vide Roy.

K I N G D O M.

Vide Chancery, (4 B.)—*Prærogative*, (D. 34, 35.)—*Roy*, (H. 1, 2.

K I N G'S B E N C H.

Vide Courts, (B. 1, &c.)—*Pleader*, (C. 3. &c.—3 B. 3.)

KNIGHT

Vide Dignity, (B. 7.)—Homage, (G. 4.)—Parliament, (D. 5.)
KNIGHT'S SERVICE.
Vide Chivalry, the Guardian, (A. H. 1, &c.)—Homage, (G. 1, &c.)

LABOURERS

Vide Chimin, (C. 2, 3.)—Justices of Peace, (B. 50, &c.)

LACHES

Vide Baron and Feme, (L.—M.)—Enfant, (D. 4.)

LANCASTERS

Vide Franchises, (D. 3.)

LANDS

By what Words they pass.

Vide Devise, (N. 2, 3.)—Fait, (E. 4.)—Grant, (E. 1, &c.)

Concealed Lands.

Vide Prærogative, (D. 65.)

Derelict Lands.

Vide Prærogative, (D. 61, 62.)

Trespass to Lands.

Vide Trespass, (A. 2.)

Trust of Land.

Vide Chancery, (4 W. 1, &c.)

LAPSE

Lapse of a Church.

Vide Esglise, H. 11, &c.)

Lapse of a Legacy.

Vide Chancery, (3 Y. 13, 14.)

L A R C E N Y

Vide Justices, (O. 4, &c.—Y. 9, 10.)

L A T I N

Vide False Latin.

L A W

Vide Ley.

L E A S E

*Vide Baron and Feme, (G. 3.)—Copyhold, (K. 3.)—Enfant, (B. 3.)—
Estates, (B. 32.)—G. 1, &c.)—Pleader, (3 O. 14.)—Pojar, B. 1,
&c.*

L E E T

(A) Leet; Sheriff's Tourn.

THE Leet is so called of the Saxon Word *gelethian, convenire.* 4 Inst. 261.

And it is named, *The View of Frankpledge*, because all Reliants within the Leet were divided in *Decennies*, viz. Corps of ten Families, and each of the *Decennie* was Pledge for the other, *quod stare Legi, &c.* whence the Chief of the principal Family was named *Capitalis Plegius*, the others, *Franci Plegii*; and the Court where they appeared, *Visus Franci Plegii.* 6 Co. 77. b. 2 Inst. 73.

The Sheriff's Leet, or the Tourn (out of which all other Leets are derived) is the most antient Court. 1 Rol. 341. l. 5, 10. 2 Inst. 72.

The Tourn, and Leet have the same Stile and Jurisdiction. 2 Inst. 71, 72. 4 Inst. 260. Cont. 18 H. 6. 13. b.

The Tourn is a Court of Record held before the Sheriff. 4 Inst. 260.

And the Sheriff himself is the Judge.

And shall have all Fines and Amerciaments there.

By the St. M. Ch. 9 H. 3. 35. The Sheriff shall have his Tourn only *bis in Anno* & in *Loco consueto*, viz. *semel post Pascha, & iterum post Festum S. Mich.* Et *Visus Franc. Pleg. fiat ad Festum S. Mich.* which is meant of a View at the Tourn. 2 Inst. 72.

By the St. 31 Ed. 3. 15. *semel infra Menssem post Pascha, & iterum infra Menssem post Festum S. Mich.* otherwise the Sheriff shall lose his Tourn for the Time.

The Sheriff may hold his Tourn at any Place within the County where he pleases.

The Jurisdiction of the Tourn is the same with the Jurisdiction of the Leet. *Quod Vide Post, (L. 1, &c.)*

But the Tourn by M. Ch. 9. H. 3. 17. shall not hold Pleas of the Crown.

So it shall have a View of Frankpledge only *semel in Anno*, after Easter. * [Michaelmas in the Statute.]

2 Inst. 72.

So the Tourn cannot inquire of a Matter within the Precinct of another Leet, tho' it be not presented there. *4 Inst. 261.*

(B) **Leet derived from the Tourn.**

THE Leet is a Court of Record derived out of the Sheriff's Tourn. *4 Inst. 261. 2 Inst. 71.*

And shall be held before the Steward; for he is the Judge of the Court. *4 Inst. 261. R. 6 Co. 12. 1 Rol. 541. l. 14. 2 Inst. 143.*

So there may be a Court by Prescription in the Nature of a Leet. *Semb. 1 Leo. 217.*

A Leet may be claimed by Charter, or the King's Grant.

Or by Prescription, which supposes a Grant: For it shall be intended, that the King granted to the Lord of the Manor to have a View of the Pledges and Tenants Resiant within his Manor. *Co. L. 114. b. 2 Inst. 71.*

So it may be claimed as Appurtenant to a Manor, Hundred, &c. *2 Leo. 74. Per And. 1 Leo. 218.*

—And if it belongs to an Hundred, by a Grant of Lands in a Vill Parcel of the Hundred, with all Leets *præmissis spectant' & pertinent'*, the Grantee shall not have a Leet within such Vill. *R. Mo. 427.*

So, if it belongs to a Manor, and the King purchases two Parts of the Manor, the Leet remains to the third Part. *1 Bendl. pl. 30. 1 And. 26.*

So, if the King grant a Leet to the Lord of a Manor, who afterwards enfeoffs another of the Manor without mentioning the Leet, he retains it. *Dy. 30. b.*

But a Man shall not have a Leet in his Manor within the Leet of another Seigniori. *1 Rol. 541. l. 10.*

Yet there may be a Superior Leet, at which the Resiants in an Inferior Leet ought to be attendant. *R. 2 Cro. 583. Dub. Cro. Car. 75. Het. 21.*

Or, by Custom, the Reeve and four Resiants ought to attend, and no others. *2 Cro. 583.*

And at the Superior Leet, a Nuisance in a Vill, where the Inferior Leet is, may be presented, if it be not presented in the Inferior. *R. 2 Cro. 551.*

But that must be specially pleaded. *R. 2 Cro. 551.*

(C) **At what Time it shall be held.**

THE Leet shall be held at the Time assigned by Charter. *Adm. 2 Sand. 291. 2 Inst. 72.*

Or, by Prescription, it may be held at a certain Day *semel*, or *bis in Anno*. *2 Inst. 72. or sapius. R. 2 Leo. 28. Cro. El. 125.*

Or, upon a reasonable Summons. *2 Inst. 72.*

Or, it may be prescribed to be held *semel in Anno*, upon which the Lord may hold it when he pleases. *Per 3 J. 2 Leo. 74.*

So, if the King grant it to hold *semel in Anno*, without ascertaining the Time. *Per 2 J. 2 Leo. 75.*

But if the Charter or Prescription does not direct otherwise; by the Equity of the *St. M. Ch. 35.* it shall be held within a Month after *Easter*, and a Month after *Michaelmas*. *Adm. 2 Sand. 290.*

And it shall be within a Lunar Month. *2 Cro. 167. Vide Ann. (B.)*

If the Leet does not appear to have been held at the lawful Time, an Indictment or Presentment there will be void. *St. P. C. 84. b.*

If it be alledged *infra Mensem*, viz. 12 Nov. it is void, for the 12th Nov. appears to be more than a Month after *Michaelmas*. *R. 2 Sand. 290. 1 Vent. 107.*

If the *Viz.* be rejected, then no Day appears, and it might have been upon a Sunday, which is not *Dies Juridicus*. *2 Sand. 291.*

So, *infra Mensem P.* or *Mich.* is uncertain; for it might be before as well as after. *D. Cro. Car. 275. Jon. 300.*

(D) At what Place.

THE Leet may be held at any Place within the Seignior, where the Lord pleases. *Kit. 44. b.*

(E) Who ought to do Suit there.

AFTER the Leet summoned by a reasonable Garnishment, and the Stile of the Court entred, and three Proclamations made, (of which *Vide Copybold*, (R. 7, &c.) the Suitors and Refiants within the Leet shall be called. *Kit. 6.*

All Refiants within the Leet of the Age of twelve Years (except Ecclesiastical Persons, Women, and Barons of the Realm) ought to do Suit in the Leet, within which they are conversant, in Person. *2 Inst. 99, 121. Vide Copybold, (K. 16.)*

And after the Age of twelve Years, shall be sworn there to the King. *Co. Lit. 68. b. Vide Allegiance, (B. 1.)*

Tho' he resides upon Lands, which belonged to an Abbey which was exempt, and there be a Grant of the Privileges of the Abbey. *R. 2 Rol. 56.*

If a Suitor does not appear at the Leet, he shall be amerced, and not distrained. *2 Inst. 118. Vide Copybold, (K. 17.)*

So the King cannot grant to another, that he shall not do Suit. *2 Rol. 56.*

So one cannot do Suit by Attorney; for the *St. Mert. 20 H. 3. 10.* does not extend to Suit Real. *2 Inst. 99.*

If a Man's House be within two Leets, he must appear where his Bed is. *2 Inst. 122.*

If he has a Family in two Leets, he must appear where his Person is commorant. *Ibid.*

A Servant is refiant where his Master is. *Kit. 33. b.*

(F) Inquest in a Leet.

AFTER the Suitors called, and the Efoigns entred, the Jury ought to be impannelled and sworn. *Kit. 7.*

An Inquest in a Tourn, or Leet, to make an Indictment, or Presentment, ought to be twelve at least. *2 Inst. 387.*

Vide Post, (G. 1, 2.)

(G. 1.) Presentment in the Leet.

BY the *St. W. 2. 13 Ed. 1. 13.* No Indictment or Presentment in a Tourn, or Leet, shall be, but by twelve at least. *2 Inst. 387. Kit. 7, 44. b.*

If there are not twelve present in the Leet, a Stranger may be sworn upon the Inquest. *Kit. 7, 44, 45. b.*

And the Steward may compel a Stranger travelling within the Leet to be sworn. *1 Rol. 542. l. 10.*

So the Steward may compel the Inquest in a Leet to be sworn; for the *St. of Marl. 52 H. 3. 22.* does not extend to it. *2 Inst. 143.*

If the Jury refuse to present Defaults of which they are informed, the Steward may fine them. *Kit. 41. b.*

[The Jury cannot present Things subsequent to their Swearing. *Semb. Moore v. Wicker, M. 11 G. 2. Andr. 47.*]

By the *St. W. 2. 13.* The Jurors ought to put their Seal to the Presentment in a Tourn.

[Inquisitions for Offences where the Party cannot be apprehended, need not be sealed, for *W. 2. c. 13.* relates only to such as are a Foundation for Imprisonment. Nor need they be indented; for *1 Ed. 3. Stat. 2. c. 17.* relates not to Presentments which were to be proceeded on in the Leet, but to such as

were to be delivered over to the Justices. *Colebroke v. Elliot*, H. 6 G. 3. 3 B. M. 1859.]

There may be a Presentment for a Nuisance, &c. within the Leet, without Notice given to the Offender of the Presentment; for all Refiants shall be supposed present. 2 *Rol.* 3.

(G. 2.) When traversable, or not.

A Presentment in a Tourn, or Leet, by twelve, of a Matter with their Jurisdiction, is not traversable. *Kit.* 42, 44. *b.* *Kel.* 66. *b.*

As, if it be for Blood spilt. *Dy.* 13. *b.* *Kit.* 42. *b.*

For Refusal to be sworn. *Kit.* 42. *b.*

For a Nuisance. *Dub.* 3 *Mod.* 138.

But a Presentment of a Matter out of their Conuance will be traversable: As, of a Freehold, &c. *Dy.* 13. *b.* *Kel.* 66. *b.* *Kit.* 42. *b.*

Or the Life of a Man. *Kel.* 66. *b.*

So a Presentment there by a less Number than twelve is traversable. *Kit.* 42, 44. *b.*

So, if a Presentment by twelve be false, the Party at the Day of Presentment shall have a Writ of false Presentment. *Kit.* 42. *b.*

If a Matter there presentable is omitted to be presented, it may be presented in B. R. or Eyre. *Kit.* 42. *b.*

Or, upon a Commission by Writ for such Purpose, and not otherwise, in the Tourn. 4 *Inst.* 261. *Kit.* 42. *b.*

By the *St.* 1 *Ed.* 4. 2. Presentments and Indictments in the Tourn must be transmitted to the Justices of Peace to proceed thereon, under the Penalty of 100*l.* 2 *Inst.* 388. *R. Jon.* 301.

(H) Common Fine.

A Common Fine *pro certo Letæ* is usually paid at *Michaelmas*, and collected by the Tithingman. *Kit.* 13. *a.*

Such Fine may have a lawful Commencement, *viz.* for the Charge of the Lord in obtaining a Grant of the Leet, and an Allowance in Eyre. *R.* 6 *Co.* 77. *b.* 2 *Inst.* 71.

And therefore, it shall be inquired, whether it be collected. *Kit.* 13. *a.*

If it be not paid, or collected, a Bill in Equity lies to enforce Payment. *Dub.* 2 *Ver.* 278.

(I) The Profits of the Lord.

SO the Leet may inquire of Things, which belong to the Lord: As, Treasure-Trove. *St.* 18 *Ed.* 2.

Wreck, Waifs, or Estrays. *Kit.* 12, 13.

Whether a Person outlawed, put in Exigent, or who flies, being indicted, had Goods. *Kit.* 12. *b.* 13. *a.*

Whether Land be aliened in *Mortmain* without Licence. *Kit.* 23. *b.*

Whether a scabbed or infected Horse be put upon the Waste. *Kit.* 12. *b.*

So, of Customs or Services withheld, by whom, and at what Time. *St.* 18 *Ed.* 2. *Kit.* 10. *b.*

Vide Post, (L. 1, &c.)

(K) Instruments of Correction.

Vide Tumbrel.

BY the *St.* 51 *H.* 3. *St.* 6. Every Liberty ought to have a Pillory of convenient Strength.

And

And therefore, the Lord of a Leet ought to have a Pillory, Tumbrel, and other Instruments of Correction, for Offences which may be punished within the Leet. *Kit. 13. a. Cro. El. 698. Mo. 573.*

So he ought to have Stocks, upon Pain of forfeiting 5*l.* *Kit. 13. a.*

And the Neglect is inquirable in the Leet. *Kit. 13. a. Vide Cart. 29.*

And for That, his Liberty may be seised. *Fl. l. 2. c. 12. S. 19. Agd. Mo. 574. Cro. El. 698. R. Mo. 607.*

But a Penalty cannot be assessed at the Leet upon a Vill for not finding them; for it belongs to the Lord, not to the Vill, without a special Prescription. *R. Mo. 607. Semb. cont. Kit. 13. a. R. Cro. El. 698. Vide Cart. 29.*

(L.) The Jurisdiction of the Leet.

(L. 1.) In Felony.

BY the Common Law, the Leet might inquire and determine of all Felonies, except Homicide. *10 H. 6. 7. 2 Inst. 32. St. 18 Ed. 2.*

So they might inquire of Murder, or Homicide. *Cont. 41 Aff. 30. Acc. Kit. 9. a. 22. b. Fl. 2. c. 52.*

So they might inquire of Petit Treason, as a Felony. *Kit. 9. a.*

Or, of High Treason, if it was a Felony before, as Coinage, &c. *Kit. 9. a.*

So they may inquire of a Felony made by Statute, where the same Statute gives an Inquiry to the Leet.

But by the *St. M. Ch. 17. Vicecom. &c. non teneant Placita Coronæ.*

And a Felony by Statute is not inquirable in the Leet, without exprefs Words in the same Statute. *2 Inst. 181. Kit. 9. a. 22. b.*

And now no Felony is determinable there; for by the *St. W. 2. 13.* an Indictment for Felony there shall be by twelve, who shall put their Seals to it, *Sta. P. C. 84. b.*

And by the *St. 1 Ed. 3. 17.* shall be taken by Indenture, whereof one Part shall remain with the Jurors, the other with the Steward, and by him shall be delivered to the Justices of Assize at the next Gaol-Delivery for the same County. *St. P. C. 85. a. 2 Inst. 388. Kit. 8. b. 10. a.*

(L. 2.) In Cases of Misdemeanor.

By the *St. 18 Ed. 2.* The Leet may inquire of an Escape out of Prison, and every Escape of Felons.

(L. 2.)
As Escape,
&c.

Be it voluntary or negligent. *Vide Escape, (A. 1, 2.)*

So, of those who go on Messages for Thieves. *St. 18 Ed. 2.*

Of fugitive Villeins, if they have not remained in *Antient Demefne* for a Year and a Day. *St. 18 Ed. 2.*

If Women, or Nuns, are carried away. *Fl. 2. c. 52.*

Or the Rape of them be not presented before the Coroner. *St. 18 Ed. 2.*

If Hue and Cry be not pursued. *St. 18 Ed. 2. 2 Inst. 172.*

Or levied without Cause. *Fl. l. 2. c. 52.*

If Persons outlawed return without the King's Licence. *St. 18 Ed. 2.*

Or a Person who has abjured. *Fl. 2. c. 52.*

So, by the *St. 18 Ed. 2.* The Leet may inquire of Haunters of Taverns, if they have not wherewithal to live.

(L. 3.)
Persons of bad
Fame.

So, of Haunters of Alehouses. *Kit. 11. a.*

So, by the *St. 18 Ed. 2.* of those who travel by Night, and sleep in the Day.

Of Vagabonds and Hazarders. *Kit. 11. a. Fl. 2. c. 52.*

So, by the *St. 18 Ed. 2.* of those who take Doves by Engines in Winter.

Of Malefactors in Parks or Warrens. *Fl. 2. c. 52.*

Of Barretors. *Kit. 11. a.*

Of those who receive poor Men for their Tenants to be chargeable to the Vill. *1 Rol. 542. l. 2.*

Of

Of Usurers, Sorcerers, Apostates. *Fl. 2. c. 52.*
 Of Eves-droppers, who stand under Walls or Windows by Night or by Day, to hear Tales, and carry them to make Debate between their Neighbours. *Kit. 11. a.*

Of Scolds or Bawlers. *Ibid.*
 So there may be an Indictment for that at the Quarter-Sessions. *Mod. Ca. 178, 213.*

And when convicted, the proper Punishment is by the Cuckstole. *Per Holt Mod. Ca. 11, 213.*

But she must be a Common Scold; for that is the Nufance. *Per Holt Mod. Ca. 213.*

So the Indictment must say, *Communis Rixatrix*; for *Commun' Rixa* is Error. *R. Mod. Ca. 239.*

Or, *Communis Calumniatrix*; for it will be reversed upon Error for this. *R. Mod. Ca. 11.*

(L. 4.)
 Adultery.

Antiently the Leet might inquire of Adultery and Fornication; which now belong to the Spiritual Court. *3 Inst. 206.*

And therefore, an Indictment does not now lie for Adultery. *Per Holt Sal. 552.*

But now they may inquire of those, who maintain Bawdry in their Houses. *Kit. 11. a.*

And a Person who keeps a Bawdy-house may be indicted. *R. 1 Sal. 382, 384.*

So a Lodger, who accommodates lewd Persons with his House or Room, for Acts of Bawdry. *R. 1 Sal. 382.*

So the Husband and Wife jointly. *R. 1 Sal. 384.*

So an Indictment lies for an Assault with Intent to ravish a Woman. *Sal. 552.*

But it is not indictable, *quod in Lupanario Scortationem committere pro Lucro procuravit.* *R. 1 Sal. 382.*

Or, *quod est communis Lena.* *1 Sal. 382.*

Or, for soliciting the Chastity of another. *Ibid.*

(L. 5.)
 Breach of the
 Peace.

So the Leet may inquire of all Assaults or Affrays. *St. 18 Ed. 2. 1 Rol. 541. 1. 46.*

Of Blood spilt, or any open Breach of the Peace. *St. 18 Ed. 2. Kit. 11. a. 23. a.*

If any wound, maim, or imprison another within the Leet. *Fl. 2. c. 52.*

If a Stranger make an Affray, and it be not presented by the Decenners. *Kit. 23. a.*

If a Man break a Pound, and rescue a Distress. *Kit. 11. a.*

Or rescue a Man arrested. *Ibid.*

(L. 6.)
 Deceit.
 In Weight or
 Measure.
 What Weights
 shall be used
 throughout
 the Realm.
 Troy.
*Vide Justices
 of Peace.
 (B. 90.)*

By the *St. M. Ch. 9 H. 3. 25. Una Mensura, unum Pondus sit per totum Regnum.* So, by the *St. 27 Ed. 3. St. 2. c. 10. 14 Ed. 3. 12.*

By the *St. 25 Ed. 3. St. 5. c. 9.* Auncel Weight (in which there was a Deceit by guiding the Balance with the Hand) is taken away. *4 Inst. 273. Vide the St. 27 Ed. 3. St. 2. c. 10. 8 H. 6. 5.*

And therefore, there are only two Species of Weights allowed within the Realm; *Troy*, and *Averdupois*. *4 Inst. 273.*

By *Troy* Weight are weighed Pearls, precious Stones, Gold, Silver, Bread, Corn, &c. *Ibid.*

So, Electuaries, Spices, Confections. By the *St. Comp. Pond'.*

By the *St. 31 Ed. 1. Comp. Mens. 32* Grains of Wheat dry in the Midst of the Ear, (or 24 Grains of Barley or artificial Grains, *4 Inst. 273.*) make one Pennyweight, of which 20 make an Ounce, whereof twelve make a Pound *Troy*.

So 24 Blanks make a Droit, 24 Droits a Minute, 20 Minutes a Grain. *4 Inst. 273.*

So 12 Grains of fine Gold make a Caret, 24 Carets make an Ounce, 12 Ounces make a Pound of Gold. *Ibid.*

[The Jury of a Leet have not Power to enter Houses to examine Weights and Measures; *Semb. Moore v. Wicker, M. 11 G. 2. Andr. 47.* though the usual Practice is so to do.]

Averdupois, tho' introduced by Custom, is allowed by the *St. Comp. Pond.* (L. 7.)
 So called, because it gives full Weight: 4 *Inst.* 273. *Averdupois.*
Troy Weight is 20s. Sterling to the Pound, *Averdupois* is computed 25s. of Peace. *Vide Justices*
 Sterling, or rather 24s. 4d. for it contains only 2 Ounces 12 Pennyweights (B. 90.)
Troy above a Pound *Troy.* *Dalt. ch.* 112. *sect.* 13.
 21 Grains $\frac{1}{2}$ make a Pennyweight, 20 Pennyweights make an Ounce, 16
 Ounces make a Pound *Averdupois.* 4 *Inst.* 273.
 7 Pounds make a Gallon, 14 make a Peck, 56 a Bushel. *Dalt. ch.* 112. *f.* 14.
 By *Averdupois* are weighed all Physical Drugs, Wax, Pitch, Tar, Iron, Steel,
 Lead, Hemp, Flax, Flesh, Butter, Cheese and all Commodities subject to Waste.
 4 *Inst.* 273.

Vide Justices of Peace, (B. 91, 92, 93.)

What Mea-
sures.

Vide Justices of Peace, (B. 100.)

WineLicence.

Vide Justices of Peace, (B. 98.)

Affise of
Wine.

By the *St.* 18 *Ed.* 2. it is declared, that the Leet may inquire of the Affise
 of Bread, or Ale broken.

(L. 8.)
Affisa Panis
et Cervisiae.
Vide Justices
of Peace.
(B. 94, 96.)

Or, of false Measure in a Bushel, Gallon, Yard, or Ell. *Kit.* 11. *b.*

Or, of false Balances, or Weights. *Ibid.*

Or, of those who buy by a great and sell by a small Measure. *Ibid.*

So, of those who, being Tiplers, sell by Measures not sealed. *Ibid.*

The Affise of Bread is broke, when Bread is not made according to the Size
 or Quantity limited by some Ordinance. *Vide Lit.* *f.* 234.

By the *St.* 51 *H.* 3. *Aff. Pan. & Cerv.* When Wheat is 12 *d.* per Quarter,
 Wastel Bread of a Farthing shall weigh 6l. 16s. Simnel Bread less by 2s.
 Cocket Bread more by 2s. if of worse Corn more by 5s.

[Selling a Loaf of Bread as a Quartern-loaf of 4lb. 5oz. and an half, whereas
 it wanted 4oz. and an half, is not within the Jurisdiction of the Leet, for it is
 a new Offence created by 3 *G.* 3. *c.* 11. which does not fix the Price, and there-
 fore is not an Affize, and directs the Prosecution to be before Justices. *Colebrooke*
v. Elliot, *H.* 6 *G.* 3. 3 *B. M.* 1859.]

By the *St.* 23 *Ed.* 3. 6. Butchers, Fishmongers, Regrators, Hostlers, Brewers,
 Bakers, Poulterers, and all other Sellers of Victuals shall sell at reasonable (L. 9.)
 Prices, having Regard to the Price in Places adjoining: And any convicted of Deceit.
 selling in other Manner shall pay double to the Party damnified, or, in his De- In Prices.
 fault, to him that will sue for the same. *Vide Justices*
 of Peace.
 (B. 89,
 95, 99.)

And Mayors, &c. of City, Borough, &c. shall inquire of Offenders, &c. or
 convict of Neglect shall pay treble to the Party damnified, and yet answer to
 the King.

By the *St.* 25 *H.* 8. 2. If Cheese, Butter, Capons, &c. and other Victual be
 enhanced, &c. the Lord Chancellor, Treasurer, President, Privy Seal, Steward,
 Chamberlain, and other Lords of the Council, Treasurer and Comptroller of the
 Household, Chancellor of the Dutchy of *Lancaster*, Justices of *B. R.* and *C. B.*
 Chancellor, Chamberlains, Under Treasurer and Barons of the *Exchequer*, or
 seven of them, (*Quorum unus* Chancellor, Treasurer, President, or Privy Seal)
 may set reasonable Prices on the said Victuals, and all Persons having or keep-
 ing any such Victuals to sell shall sell the same at such Prices, on a Penalty in
 the Proclamation which notifies such Prices.

But Justice *Berkly* was impeached for saying, that Corn was Victuals within
 the Statute. 2 *Rush.* 606.

The Leet may inquire of those who sell for unreasonable and excessive Prices,
 having Regard to the Common Prices in near Places. *Kit.* 11. *b.*

As, of Butchers, Brewers, Fishmongers, Poulterers, Cooks, Vintners, and all
 others. *Ibid.*

Innkeepers who sell Corn and Beans at excessive Prices, and take more than a Halfpenny a Bushel above the Market Price, and nothing for Litter. *Kit.* 11, 12.

If an Innkeeper do not bake his Horse-bread according to the Price of Grain. *Kit.* 12. a.

If a Miller take an excessive Toll, which ought to be only the 20th or 24th Grain, according to the Strength of the Water. *Ibid.*

Vide Justices of Peace. (B. 89, 95, 99.)

(L. 10.)
In Quality.
As to Victual-
lers, *Vide Jus-
tices of Peace,*
(B. 88.)

By the *St.* 51 *H.* 3. of *Pillory and Tumbrel*, A Jury shall inquire, if any Butcher sell contagious Flesh, or that died of the Murrain.

Or, if Cooks seeth unwholsome Flesh, or Fish.

And therefore, as a Nufance, or as contained within the *St. Affisa Panis & Cervisæ*, the Leet may inquire, if any sell Bread, or Ale unwholsome. 4 *Inst.* 262. *Kit.* 11. b.

If a Butcher, Fishmonger, or other Victualler sell corrupt Victual. 4 *Inst.* 261. *Kit.* 11. b.

If corrupt Malt or Hops are used. 4 *Inst.* 263.

Or corrupt Drugs, or Spices. *Semb.* 4 *Inst.* 264.

If a Miller change Grain, which he had to grind. *Kit.* 12. a.

If Artificers use any Deceit. *Ibid.*

Or use two Offices; of a Tanner and Shoemaker, or Butcher, &c. *Fl.* 2. c. 52.

But the Leet has not Jurisdiction, if a Tanner utter Leather not sufficiently tanned. *R.* 1 *R.* 3. 1. a.

(L. 11.)
In Office.)

The Leet may inquire of a Constable, Aleconner, Bailiff, or other Officer, who neglects his Duty.

As, if a Constable does not do Watch and Ward. *Fl.* 2. c. 52.

(L. 12.)
Common Nu-
fance.
What shall be.

So a Common Nufance may be inquired of at the Leet. *Co.* L. 56. 1 *Rel.* 541. l. 45. *Kit.* 10. b. 23. a.

If it be *ad commune Nocumentum* of all the King's liege Subjects; for if the Presentment does not say, *ad commune Nocumentum*, it is bad. *R.* 2 *Cro.* 382.

Or, if it be, *ad Nocumentum Ligeorum prope Inhabitantium*. *R.* 1 *Rel.* 406.

Or, *diversorum Ligeorum*. *R.* *Cro.* El. 148.

As, if a Ditch be made cross the Highway. *Co.* L. 56. a.

Or, if a Ditch in an Highway be not cleansed. 1 *Rel.* 541. l. 50. *Kit.* 23.

And they may amerce for it in the Leet; tho' a Forfeiture for it is given to the Surveyor by the *St.* 18 *El.* 10. *R.* *Ray.* 250.

So, if a Gate be put up in an Highway, tho' not locked; for it hinders the Passage. *R.* *Cro.* *Car.* 184. 2 *Rel.* 137. l. 50.

If a Laystall be made in an Highway. *Kit.* 11. a.

Or Carrion thrown out there. *Ibid.*

If a Way or Path be stopped or diverted. *St.* 18 *Ed.* 2.

Or there be an Encroachment upon it. *Kit.* 11. a.

Or Billets or Logs be laid *sparfim*, and continue there. *R.* 2 *Rel.* 137. l. 25, 35.

So, of a Bridge broken. *Kit.* 23. a.

Or Water stopped, or diverted from its Course. *St.* 18 *Ed.* 2.

Of Bounds thrown down, or taken away. *Ibid.*

Of Purpresture done in Land, Wood, or Water, by the *St.* 18 *Ed.* 2.

Of Blocks, Stocks, Ditches, or Hedges levied, made, or filled up, to Annoyance: By the *St.* 18 *Ed.* 2. *Kit.* 10. b.

Of Walls, Houses, Pales, or Hedges set up, or thrown down, to Annoyance. *Ibid.*

If an House near the Highway continues ruinous, to Annoyance. *R.* 1 *Sal.* 357.

Tho' the Occupier be only Tenant at Will. *Ibid.*

Of common Breakers of Hedges. *Kit.* 11. a.

Introducing Inmates of poor Families into an House. *R.* 2 *Rel.* 139. l. 5.

Corrupting Water by whytawing, Lime, or Flax lying in the Water. *Kit.* 11. b.

If a Person who has no Warren stores his Land with Conies, it is a common Nufance. *Mo.* 453.

But

But if any (besides the Parson or Lord) build a Dovecote, it will not be a Nufance inquirable by the Leet; for if it be lawful for the Lord or Parson, it cannot be a Nufance in another. *R. 2 Cro. 382, 491. 2 Rol. 138. l. 36.—Cont.* (L. 13.)
Mo. 238. 5 Co. 104. Mo. 421. Acc. 2 Rol. 4, 30. *Vide Action, What not, upon the Case for a Nufance.*

So, if a Man unload Billets, &c. in a Street or Highway; for Necessity requires it. *2 Rol. 137. l. 30. 2 Rol. 32.*

Or erect Scaffolds, &c. for repairing a Building. *2 Rol. 145. l. 10.*

So a private Nufance is not inquirable in the Leet: As, if one surcharge a Common. *R. 1 Rol. 541. l. 40.*

If he stop a Watering Place for the Inhabitants of B. *Co. L. 56. a.*

If he stop up his Lights. *R. 9 Co. 58. a.*

If he suffer his Gate to be open to the Annoyance of others. *R. Cro. El. 414. Mo. 356.*

Vide Action upon the Case for a Nufance.

Also, by the Words of several Statutes, the Leet may inquire of the following Offences. (L. 14.)
Jurisdiction by several Statutes.

As, by the *St. 14. (or 14 and 15) H. 8, 10.* of those who trace Hares in the Snow, who shall forfeit *6s. 8d.* to the Lord of the Leet. *Vide Justices of Peace, (B. 9.)*

By the *St. 24 H. 8. 10.* Every Occupier of Land within a Leet, presented for not endeavouring to destroy Choughs, Crows, and Rooks upon his Land, shall be amerced at the Discretion of the Steward, and two Presenters (named by the others) according to the Offence, to the Use of the Lord, to be levied by Distress as other Amerciaments. And the Steward ought to give this Act in Charge.

Nota, This Part of the Act was repealed by the *St. 8 El. 15.* and the Repeal continued by several other Acts which are all expired, whereby this Clause seems now in Force.

By the *St. 32 H. 8. 13.* If any put a Stone-horse above two Years old, and not fifteen Hands high, on a Common, Wast, &c. within the Shires and Territories of *Norfolk, Suffolk, Cambridge, &c.* or not being fourteen Hands, on like Grounds in any other Shire, it shall be forfeited to the Finder, who may carry a Constable to fetch the Horse to Pound, and measure him before three honest Men. And the Constable or three Men refusing, &c. forfeit *40s.* And Owners shall yearly in fifteen Days after *Michaelmas* drive the Forests, Commons, &c. on Pain of *40s.* Which Offences may be presented in the Leet, and such Presentment shall be certified to the next General Sessions of the County in forty Days, on Pain of *40s.* by the Steward.

By the same *St.* If any put any scabbed Horse on a Common, &c. he forfeits *10s.* to the Lord; of which the Leet may inquire. *Vide Justices of Peace, (B. 43.)*

By the *St. 33 H. 8. 6.* None shall keep or use an Hand-Gun not a Yard long in the Stock and Barrel, or Hag-but not three Quarters of a Yard long, on Pain of *10 l.*

None, not having *100 l. per Annum,* shall shoot with, keep or carry bent or charged any Cross-Bow, Hand-Gun, or Hag-but, unless to shoot at a Butt or Bank of Earth in a Place convenient, on Pain of *10 l.*

None shall shoot within a Quarter of a Mile of a City, Borough or Market, unless at a But or Bank.

No Servant shall shoot at a Deer or Fowl by Command of his Master, but may carry a Gun for his Master, or to be mended, on Pain of *10 l.* a Moiety to the King, half the other Moiety to the Lord of the Leet, and half to the Informer.

By the *St. 33 H. 8, 9.* Every one, for every Male in his House, of or above seven and under seventeen Years of Age, shall provide a Bow and two Arrows: And every one, above seventeen and under sixty, shall provide himself a Bow and four Arrows, on Pain of *6s. 8d.* for each Offence, except a Spiritual Person, or Judge.

None under twenty-four shall shoot, unless at Rovers, on Pain of *4 d.* every Shoot, and none above shall shoot at a Mark of 220 Yards or under, with any Prick-

Prick-shaft on Pain of 6 s. 8 d. None under seventeen shall use a Yew Bow, who or whose Parents have not Lands or Tenements to the Value of 10 l. *per Annum*, or be not worth 40 Marks in Goods, on Pain of 6 s. 8 d. Every Town shall provide Butts on Pain of 20 s. for every three Months Default.

Vide Justices of Peace,
(B. 42.)

* [All such Placards made void by
St. 2 & 3
Pb. & M. 9.]

By the same St. None shall keep a Common House, or Alley, for Bowls, Coyts, Tennis, Dice, Cards, or other unlawful Game, invented or to be invented, on Pain of 40 s. for every Day, without a Placard * expressing what Game, and by whom to be played, at the obtaining of which he shall find Surety not to use it contrary to the Form thereof.

None shall haunt, or play at, such Houses, or Games. on Pain of 6 s. 8 d. for every Time.

And no Artificer, Handicraftsman, Husbandman, Labourer, Apprentice, Journeyman, Mariner, Fisherman, Waterman, or Servant shall play at any unlawful Game, unless at *Christmas* in the Master's House, or by Licence of the Master, with such as resort to his House, on Pain of 20 s. every Time. A Moiety of the Forfeitures to the Lord of the Leet, a Moiety to the Informer. And Justices, Bailiffs, Constables, &c. shall search once a Month at least, on Pain of 40 s. if need be, after such Houses, and Games, and the Keepers, or Haunters of them may imprison, till they find Surety by Recognizance not to keep or haunt such Games.

By the St. 33 H. 8. 17. None shall water Hemp or Flax in a River, Stream, or Common Pond, where Cattle drink, on Pain of 20 s. in a Court of Record, Leet, &c. a Moiety to the King, a Moiety to the Informer.

Vide Justices of Peace,
(B. 89.)

By the St. 2 & 3 Ed. 6. 15. Butchers, Brewers, Bakers, Poulterers, Cooks, or Fruiterers, conspiring not to sell but at certain Prices: And Artificers, or Labourers, conspiring not to work but at certain Prices, or at certain Hours, or Times, or not to finish what others have begun, forfeit 10 l. for the first Offence, or on Non-payment in six Days, twenty Days Imprisonment: 20 l. for the second, or on Non-payment in six Days, Pillory: 40 l. for the third, or on Non-payment in six Days, Pillory and one Ear.

Vide Justices of Peace,
(B. 100.)

By the St. 7 Ed. 6. 5. None shall retail Wine but in a City, Borough, Port, Corporate or Market Town, on Pain of 10 l. *per Diem*. Nor in a City, or Town Corporate, unless impowered by the Head Officer and most Part of the Common Council, Aldermen, Burgeffes, or Commonalty there, by Writing under the Common Seal, on Pain of 5 l.—But now by the St. 12 Car. 2. 25. The Patentees of granting Wine Licences may impower, &c. as it seems.

By the St. 2 & 3 Pb. & M. 8. The Steward of a Leet may fine, or amerce, at his Discretion, Offences presented to be committed within the Leet against that Statute for Repair of the Highway; and in their Default, the Quarter Sessions.

And by the St. 18. El. 10. The Leet has Jurisdiction of Offences against that Act for the Repair of the Highways.

Vide Justices of Peace,
(B. 44.)

By the St. 1 El. 17. The Leet may inquire within a Year, of those who take the Fry, or Spawn of Fishes, or Pikes under ten, Salmon sixteen, Trouts eight, Barbel twelve Inches, or take Fish (except by Angling) in any other Way than with a Net or Tramell of two Inches and half Mesh, except Smelts, Loches, Minnies, Gudgeons, and Eels, who shall lose 20 s. to the Lord of the Leet. And if the Steward does not give this in Charge, he shall lose 40 s. And if the Jury voluntarily conceal the Offence and do not present it, the Steward shall impanel another Jury to inquire of the Concealment, and if it be found, each Juror shall lose 20 s. to the Lord of the Leet.

[The Water-bailiff cannot seize unlawful Nets before Conviction. *Bulbrook v. Goodere*, M. 6 G. 3. 3 B. M. 1769.]

Vide Justices of Peace,
(B. 45, 46.)

By the St. 23 El. 10. The Leet shall inquire, if any in the Night take a Pheasant, or Partridge, or hawk, or hunt with a Spaniel, over eared Corn, who shall forfeit 20 s. for each Pheasant, 10 s. for a Partridge, 40 s. for hunting, or hawking, a Moiety to the Lord, a Moiety to the Informer, or, if he refuse it, to poor Men of the Parish, and shall find Surety before a Justice of Peace not to offend within two Years; and if he does not pay within ten Days, he shall be imprisoned for a Month, without Bail.

By the St. 31 El. 7. The Leet shall inquire if any erect a Cottage for Habitation, without four Acres of Land, his Freehold or Inheritance, annexed to it, who shall forfeit to the King 10*l.* or continuing such Cottage shall forfeit 40*s.* *per Menssem*, unless it be within a Borough, or Town, or within a Mile of a Mine, Quarry, &c. for working there, or within a Mile of the Sea or navigable River for a Sailor, or such who by Occupation makes, furnishes, or victuals any Ship, or a Cottage by a Parker, or Warrener, or before erected by a Common Herdsman, Shepherd, or Impotent Poor, or by Order of Assises or Quarter Sessions: Or, if any place, or suffer an Inmate or more Families than one in any Cottage, who shall forfeit 10*s.* *per* Month to the Lord of the Leet, to be levied, after Presentment, by Distress, or recovered by Action of Debt. *Vide Justices of Peace, (B. 84.)*

(M) Officers in a Leet.

(M. 1.) Steward.

PROVIDEAT sibi Dominus de Seneschallo discreto, &c. cujus Officium est Curias tenere, &c. Fleta l. 2. c. 72. *Vide Copybold, (C. 5.—R. 3, 5. &c.)*

In a Court Leet the Steward is Judge. 6 Co. 12. 4 Inst. 261.
And he is a Judge of Record. 10 H. 6. 7. a. Kit. 41. R. 8 Co. 41. Greisly.
The Steward of a Leet may be retained by Deed, or by Parol. Co. L. 61. b.
R. 4 Co. 30. a. Dy. 248. Kel. 158. b.
And shall have Debt for his Salary, but not Annuity, tho' retained without Deed, Dy. 248.
He may make a Precept to the Bailiff to distrain, by Parol. Kit. 41. a.
And may fine. Kit. 41. R. 8 Co. 41.
A Steward might have been punished in the Star-Chamber for a Misdemeanor. Kit. 42. a.

(M. 2.) Bailiff.

Ballivus cujuscunque Manerii debet esse in Verbo verax, in Opere diligens, &c. Fl. l. 2. c. 73.

And shall be sworn in the Leet to do his Office. Kit. 45, 46.

(M. 3.) Reeve.

The Reeve is called from the Saxon Word *Gerefa*, *Præpositus*. Co. L. 61. b.
Domino vel Seneschallo debet præsentari, cui injungatur Officium, &c. Fl. l. 2. c. 76.

And shall be sworn to do his Office in the Leet. Kit. 46. a.
And his Oath contains, that he will execute all Attachments and Process to him directed by the Lord, or his Steward, and present all Pound-breaches, Waifs, and Estrays, &c. Kit. 46. a. Co. L. 234. b.

(M. 4.) Ale-conner.

An Ale-conner shall be sworn in the Leet, to see that Bread be weighed according to the Assise, and that Ale be wholesome, and sold at due Prices, and to present all Defaults of Brewers and Bakers. Kit. 46. b.

(M. 5.) Constable.

A Constable is an Officer chosen for the Maintenance of the King's Peace within his Precinct. *(M. 5) Chief Constable.*

And, by the Common Law, there was a Chief Constable as well as a Petit Constable. 1 Sal. 175, 381.

By the St. Wint. 13 Ed. 1. St. 2. c. 6. In every Hundred and Franchise, two Constables shall be chosen to make the View of Armour, * who shall present to * [Repealed, as to Armour, the by 21 Jac. 28.]

the Justices such Defaults as they see about Armour, Suits of Towns, Highways, lodging Strangers in Upland Towns for whom they will not answer, and Defaults in not following Hue and Cry. (*Vide 4 Inst. 267.*)

And therefore, their Duty by that Statute consists in those five Points. *Ibid.* But their Authority was only enlarged by that Statute. *1 Sal. 381. Cont. 4 Inst. 267.* where it is said, that they have no Authority but what was given by that or subsequent Statutes.

[The Mutiny Acts, under the Word *Constable*, comprehend a *High-constable*. *Medhurst v. Waite, M. 2 G. 3. 3 B. M. 1259.*]

[He may make a Deputy to do ministerial Acts, and such is billeting Soldiers; for not every Act which requires Judgment is a *judicial Act*, but such as is done *pendente lite*, of some Sort or other. *Ibid.*]

The High Constable shall, regularly, be chosen by the Justices of Peace at Sessions. *1 Bul. 174.*

Or, by Prescription, he may be chosen by the Leet, as well as the Petit Constable. So the Sessions may remove, if necessary. *1 Bul. 174. Sal. 150.*

So, if such Constable present another at the End of his Year according to Usage, and the Court refuse him, *B. R.* may issue a *Mandamus* for his Discharge, and the Swearing of the other; and if there be a Cause for the Refusal it must be returned. *R. 1 Rol. 536. l. 5.*

And if, during his Office, he be elected Overseer in another Parish, he shall be discharged by *B. R.* *2 Jon. 46.*

(M. 6.)
Petit Constable.
How chosen.

The Petit Constable is an Officer at Common Law. *4 Inst. 265, 267.* And his Election belongs to the Leet. *4 Inst. 265. R. 1 Rol. 541. l. 25. Sal. 502. Sav. 94.*

And properly to the Homage there. *2 Jon. 212. 1 Sal. 175.*

And the Leet may prescribe to elect one of the Resiants Constable. *8 Co. 38. a.*

If the Constable elected be present, he shall be sworn there. *1 Sal. 175.*

So a Corporation may prescribe to choose a Constable, but has no Right to do it of Common Right. *R. Sal. 502. Comb. 416.*

And an Indictment for refusing to be sworn when chosen by a Corporation, must shew the Power to elect by Custom, or Prescription. *Semb. Skin. 669. Comb. 416.*

[The Quarter Sessions cannot discharge Constables appointed at the Leet. *Constables of Limington's Case, P. 1 G. 2. Str. 798.*]

And therefore, if a Constable chosen by the Leet be discharged at the Sessions, and another sworn, a Writ shall issue out of *B. R.* to the Justices to discharge the Party chosen by them, and to swear him chosen in the Leet. *R. 1 Rol. 535. l. 45. 541. l. 15. 1 Bul. 174.*

* [Not a
Writ but a
Rule of
Court.]

But a Borsholder, Headborough, or Borough-head, Tithingman, Trithingman, or the Chief Pledge, has the same Authority in many Cases as the Petit Constable.

And by the *St. 13 & 14 Car. 2. 12.* In case the Constable, &c. dies or goes out of the Parish; two Justices of the Peace may make and swear a new Constable, Tithingman, &c. till the Lord holds a Leet, or the next Quarter Sessions, who shall approve the Officer so made and sworn, or appoint another, as they think fit.

[If the Sessions discharge old Constables, and appoint new ones, on a Suggestion that the old Ones had served a Year, they must make an Adjudication of their having served the Year. *Rex v. Davis, T. 9 G. 2. Str. 1050. B. R. H. 282.*]

[The Sessions cannot appoint Constables for a Year, or till others are chosen, but only till the Lord holds a Court. *Ibid.*]

So a Constable chosen at the Leet may be sworn by the Sessions, or any Justice of Peace. *1 Mod. 13. 2 Jon. 212.*

So, if the Homage choose a Constable, but the Steward refuses him, and swears another, the Quarter-Sessions may examine the Matter, and swear him who was chosen by the Homage. *R. 2 Jon. 212.*

So, if a Constable chosen at the Leet be absent, the Justices of Peace, as Conservators of the Peace by the Common Law, may swear him. 1 Sal. 175. Skin. 635.

And the Constable ought to have Notice of his Election. Skin. 635.

Yet the Sessions since the St. 13 & 14 Car. 2. cannot make a Constable where there never was any. Semb. 1 Mod. 13. Yet it was said *per Holt*, that a Constable and a Vill are correlative, and the Justices of Peace may make them in any Vill, but not in an Hamlet. 1 Sal. 176.

So the Sessions cannot imprison for refusing to be sworn, but he must be indicted. R. Cro Car. 567.

The Constable elected ought to be *Homo idoneus*: viz. honest, and of competent Knowledge, Substance, and Ability of Body. 8 Co. 41. b.

If he be *idoneus*, he may be chosen, tho' he be a Master of Arts. Semb. 1 Rol. 533. l. 45. 541. l. 15.

Tho' he be Tenant to a Parliament-Man. 1 Mod. 13.

Or a Physician. R. 1 Mod. 22. Dub. 1 Sid. 431.—S. C. 2 Keb. 578.

Tho' he be a Watchman at the Custom-House, and alledge a Custom that such shall not be; for the Custom is void. R. 1 Sid. 272.

Or a Captain of the King's Guard. R. 1 Lev. 233.

But an Alderman of London shall not be chosen Constable, where he lives in the Country; tho, by the Custom, the Constable is to be chosen of any of the Inhabitants within the Manor. R. Cro. Car. 585. Jon. 462.

Nor an Attorney; but he shall have a Writ of Privilege. R. Cro. Car. 389. D. Cro. Car. 585.

Nor the Servant of a Member of Parliament. 1 Mod. 13.

Nor a Counsellor or Barrister at Law. 2 Keb. 578.

Nor, by the St. 1 W. & M. 18. A Teacher in a Congregation allowed by the same Act.

Nor, by the St. 6. (or 6 & 7) W. 3. 4. An Apothecary in London or seven Miles distance, if free and approved by the Company, or in the Country, if he hath been seven Years Apprentice, while he continues to use the Trade.

Nor, by Charter 2 Jac. a Surgeon. 2 Keb. 578.

[A Man is not exempted from being Constable of a Manor, which exceeds the Bounds of one Parish, by a Certificate under 10 & 11 W. 3. c. 23. for this is not a Parish or Ward Office, tho' he may be exempted from being Constable of a Parish, or of a Manor co-extensive with a Parish. Rex v. Darbyshire, T. 1 G. 3. 2 B. M. 1182.]

So, if the Constable be not *idoneus*, he may be discharged by the Leet, or a Writ out of B. R. 8 Co. 42. a. 1 Bul. 174. *

* [By Rule of Court.]

So, if a Constable be chosen for a Year, and at the End of the Year he presents another to the Leet to be sworn, and the Steward will not swear him, a Writ shall issue out of B. R. to the Steward to swear him; and if he be not *idoneus*, it may be returned for Cause. R. 1 Rol. 536. l. 5.

So, if a Tithingman by the Custom ought to serve only for one Year, and the Homage continues him for another Year, there may be a Writ from B. R. for his Discharge, and to elect another. R. 1 Rol. 536. l. 10.

And by the St. 13 & 14 Car. 2. 12. If a Constable continue above a Year in his Office, the Justices at the Quarter-Sessions may discharge him, and place another fit Person in his Room, till the Lord hold his Court.

A Constable, elected, must take an Oath, if it be required, to execute his Office.

And such Oath may be administered by the Steward of the Leet. Kit. 47. a.

(M. 8.)
The Duty of
a Constable.
To take an
Oath.

1 Sal. 175.

Or by any Justice of Peace, 2 Jon. 212. As Conservator of the Peace. 1 Sal. 175. Vide Ante, (M. 6.)

Or, if he be chosen by two Justices, or the Quarter-Sessions pursuant to the St. 13 & 14 Car. 2. 12. by the Justices or Sessions.

[If a Constable chosen at the Leet, is afterwards sworn-in before a single Justice of the Peace, it is a good Swearing. Rex v. Franchard, H. 14 G. 2. Str. 1149]

And

And if the Constable refuse the Oath, being present, the Steward may fine him for his Contempt. *R. 8 Co. 38, 41. 1 Sal. 175. 5 Mod. 96, 130. Sav. 94.*

If he be absent, he may be presented by the Homage at the next Court, and amerced. *1 Sal. 175. 5 Mod. 130.*

So he may be indicted for Refusal. *5 Mod. 96. Dub. F, g. 192. Vide Post, (M. 11.)*

But the Indictment must shew, he was well elected, and by whom. *R. 5 Mod. 96.*

So the Sessions cannot fine him for refusing to be sworn. *5 Mod. 96.*

(M. 9.)
To keep the
Peace.

A Constable by his Oath swears, that the Peace shall be duly kept according to his Power. *Kit. 47. a.*

That he will arrest All, whom he sees making Riots, Debates, or Affrays. *Ibid.*

That he will endeavour, upon Complaint, to take Felons, Barretors, and riotous Persons. *Ibid.*

And that the Statutes against Beggars, Vagrants, Rogues, and idle Persons shall be observed. *Ibid.*

A Constable by the Common Law is a Conservator of the Peace within his Precinct. *Kit. 47. b.*

And therefore, if the Peace be broke in his View, he may take the Wrongdoers and bring them to a Justice of Peace. *H. P. C. 135.*

So, if it be in the Night, &c. he may imprison them in the Stocks, or other Custody for a reasonable Time, till he can bring them before a Justice.

Or till they find Surety. *H. 136. Per Popb. 13.*

So he may make Proclamation, that the Affrayers depart.

And if an Affrayer flies, he may pursue him into another County or Franchise. *H. 92.*

If he flies to an House, he may break open the House to take him. *H. 136.*

Or, if the Affray be made in an House. *H. 135.*

If an Assault be upon the Constable himself, he may take him, or return the Blow. *H. 92, 136.*

So, upon Complaint of a Felony committed, he may take up any of bad Fame, suspected. *17 Ed. 4. 5. H. 92. Vide Imprisonment, (H. 4.)*

He may arrest him that gives the Stroke, tho' the Party be not dead. *H. 92.*

So, upon Complaint, he may take him that threatens Death. *See Lamb. Const. Sect. 13. at the End.*

And upon a Felony he may break open an House to take a Man. *H. 93.*

So he may arrest for Prevention of a Felony. *H. 136. Brownl. 198. Popb. 13.*

So he may arrest Night-walkers, who go abroad in the Night and sleep in the Day. *R. 13 H. 7. 10. b.*

And Persons who frequent Houses of Bawdry, or keep suspicious Company. *Ib.*

Or, by the Custom of London, he may carry to the Counter a Person found with a Woman in Adultery; for it is a Breach of the Peace. *1 H. 7. 6.*

So he may detain in the Stocks him who leaves an Infant of two Months old in a Church. *R. Mo. 284. Cro. El. 287. Popb. 12.*

So, by his Office, he may bring before a Justice of Peace, a Person whom he finds drunk, tippling, cursing, &c. contrary to the Statute.

Or selling Wares, using unlawful Sports, or travelling upon a Sunday contrary to Statute.

But a Constable cannot imprison, or put in the Stocks, without bringing the Person before a Justice of Peace. *R. Sav. 98.*

Nor for longer Time than till he can conveniently bring him before a Justice. *H. 92.*

So he cannot imprison without a Warrant, for an Affray not made in his View. *H. 136.*

Nor for an Assault, or contumelious Language to him, going upon his Duty. *R. Sav. 98.*

So he cannot take a Recognisance for the Peace. *Kit. 48. b. Dalt. 3.*
Nor an Obligation for Security of the Peace. *Cont. Kit. 48. a. b.*

So a Constable swears, to execute all Process or Precepts to him by the Justices of Peace. *Kit. 47.*

If a Statute gives Jurisdiction to Justices of Peace, the Constable, tho' not named by the Statute, must execute all Process and Warrants of the Justices thereupon to him directed. *R. 1 Sal. 381.*

If the Warrant be to him only, he may execute it out of the Precinct of his Vill, tho' he need not do it. *1 Sal. 176.*

Otherwise, if a Warrant be directed generally, to all Constables, Bailiffs, &c. for then the Constable cannot go out of his Precinct. *1 Sal. 176.*

So, if a Constable sees an Affray, and would arrest the Affrayers, who fly into another County, he may pursue and take them there. *13 Ed. 4. 8. b.*

After a Warrant executed, the Constable ought to certify what he has done; otherwise the Defendant cannot be discharged. *R. 1 Sal. 381.*

But he need not return the Warrant; for it may be necessary for his Defence. *1 Sal. 381.*

If any make Resistance with Force, &c. he is sworn to make Outcry, and pursue them till taken. *Lamb. Const. sect. 14.*

And if any upon a Felony fly, the Constable may seize and safely keep his Goods, for which he must answer, and therefore ought to inventory them.

He is also sworn, that he will present Bloodsheds, Outcries, Affrays and *Rescous* within his Office. *Kit. 47. Dalt. ch. 174. at the End.*

But he is not obliged to make Presentment but of an Offence within his Cognisance, tho' it be proved to him by Witnesses. *1 Vent. 336.*

He is also sworn, that he will endeavour that the *St. Winton* for Watch, and Hue and Cry, be observed. *Kit. 47.*

A Constable is charged to see, that the Watch be observed according to the *St. Winton*, *13 Ed. 1. 4. Lamb. Const. sect. 13.*

And that Hue and Cry be pursued from Town to Town, against Felons, according to the *St. Winton*, *13 Ed. 1. 1. Lamb. Const. sect. 13.* for he ought to raise the Town by Night or Day, and warn the next Constable. *H. P. C. 90.*

He shall bring suspicious Persons, delivered to him by the Watch, before a Justice. *Dalt. ch. 104. sect. 3.*

If an Inhabitant in his Turn refuse to watch, the Constable may put him in the Stocks. *R. 3 Leo. 208. Per Wray, Gawdy cont. Cro. El. 204.*

So he may be indicted for the Refusal. *Comb. 243.*

But the Constable cannot make a Passenger to serve upon the Watch, but must aver, that he was an Inhabitant. *R. 3 Leo. 208. R. Cro. El. 204.*

Nor an Inhabitant of a Town at his Pleasure, but in his Turn. *3 Leo. 208.*

So an Indictment against a Woman for not watching is bad, unless it says, that she did not procure another to watch for her. *Comb. 243.*

If a Constable neglects his Duty, he may be indicted. As, if he does not execute a Warrant, or Process to him directed. *2 Rol. 78. R. 1 Sal. 381.*

5 Mod. 96. Vide Ante, (M. 8.)

(M. 10.)
To execute
Process. Pursue with Outcry.—Present Affrays, &c.—Provide Watch and Hue and Cry.

(M. 11.)
Penalty for Neglect.

(N) Fine in a Leet.

(N. 1.) When a Fine may be imposed.

EVERY Court may impose a Fine for a Contempt within View of the Court: As, all the Courts of Record in *Westminster-Hall*. *11 Co. 44. a.*

So the Leet may impose a Fine, pursuant to a Bye-Law there, for harbouring of Inmates. *Per Hale Hard. 471.*

So, for an Offence within the View of the Steward. *2 Rol. 3, 4.*

So the Court of Admiralty may impose a Fine for Contempt in their View, tho' it be not a Court of Record. *1 Vent. 1.*

So the Court of Mayor and Alderman in *London*, if an Alderman refuses to attend the Court. *Semb. Pal. 533, 539.*

But, generally, a Court, not of Record, cannot impose a Fine: As, a County Court, Hundred, or Court-Baron. 11 Co. 43. b.

So a Court, in Equity by *English Bill*, cannot fine for not answering the Bill.

Nor, for not performing a Decree. 4 Inst. 84.

So Ecclesiastical Courts before the Ordinary, Archdeacon, &c. or their Commissaries; for they proceed according to the Canon, or Civil Law. 11 Co. 44. a. 4 Inst. 324.

Nor the High Commission. 4 Inst. 324, &c.

So a Constable, tho' he may imprison upon an Affray, cannot fine. 11 Co. 44. a.

So the Pope never fined or imprisoned, but proceeded only by Ecclesiastical Censures. 4 Inst. 324.

So, no Ordinary or Ecclesiastical Judge in an Ecclesiastical Cause, unless authorized by Act of Parliament. *Ibid.*

Tho' the King by Letters Patent grants a Power to fine. *Ibid.*

(N. 2.)
Proclamation
upon Pain.

So where a Court may fine, it may make Proclamation, upon Pain; As, Proclamation for Silence, upon Pain. 1 Rol. 219. l. 12.

Or command that an Officer shall do his Duty, upon Pain, and if he do not, he shall lose his Office. 1 Rol. 219. l. 15. *Per Cotmore*, 7 H. 6. 12. b.

(N. 3.) For what Cause.

A Fine may be imposed for any Neglect of his Duty to the Court by any Officer: As, if an Officer in a Leet refuse to do upon Command, that which belongs to his Office. 8 Co. 38. b. 1 Rol. 218. l. 40. 542. l. 12.

If a Bailiff refuse to make a Return of the Pannel. 1 Rol. 219. l. 15. 542. l. 12.

If a Constable, being elected, refuse the Office. R. 8 Co. 38, 41.

Or, to make a Presentment, 8 Co. 38. b.

So, if a Juror refuse to be sworn he may be fined. 1 Rol. 219. l. 18.

Or, if he depart without giving his Verdict. 8 Co. 38. b.

Or the Inquest refuse to present Defaults, of which they are informed. *Kit.* 41. b.

Or a Man refuse to be sworn to give Evidence to the Grand Inquest, in a Case of High Treason. 1 Sal. 278.

Or the Jury, being sworn to present Articles of the Leet, refuse to do it, each may be fined for such Concealment and Contempt. R. Dy. 211. b.

So, for a Contempt in View of the Court: As, if a Man makes a Disturbance in Court. R. 8 Co. 38. b.

If the Steward desire him to be uncovered, and he says, that he does not regard what he can do. R. Ray. 68.

If he says openly to the Steward in Court, *You lie*; for it is a Contempt. R. Mo. 470. Cro. El. 581.

If a Man refuse to be sworn to give a Verdict, or will not give a Verdict when sworn. *Semb.* 1 Leo. 217.

But for a Thing not in his View, the Steward cannot fine: As, for not doing Suit. R. Cro. El. 241.

Nor for Words, which do not import a Contempt: As, if he say to the Steward in the Town-Hall, *that the Mayor has more Right there than the Steward himself*. R. 2 Jon. 229.

(N. 4.) In what Manner.

(N. 4.)
Must be af-
fessed seve-
rally.

A Fine ought to be imposed upon every Offender severally. Dy. 211. b.

Tho' many join in the same Offence, for the Offence of one is not the Offence of the others: As, if the twelve Chief Pledges refuse to present *pro Certo Leta*, they cannot be fined together. R. 11 Co. 42. b.

But where there is an Uncertainty, as to the Offenders, they may be fined generally together: As, a Fine may be imposed upon the whole Town, Hundred, or County, &c. As, for the Escape of a Murderer. 11 Co. 43. b.

So a Fine ought to be reasonable. 4 Inst. 261. an *honorarius* ed ed in *bn*.
By the St. 1 W. & M. 2. Sess. 2. Excessive Fines ought not to be imposed.

(N. 5.)
Must be rea-
sonable.

And therefore, if a Fine in a Court Leet be unreasonable, it may be avoided by Plea, and Judgment of the Court; for the Judges are to determine the Reasonableness of the Fine. R. 11 Co. 44.

So, if a Fine be excessive, or without Cause, it shall be discharged upon a *Certiorari* to remove it to B. R. 1 Vent. 336.

So, upon a Distress for such a Fine, Trespass lies. R. 2 Jon. 229.

So, upon a *Certiorari*, &c. the Cause of the Fine, the Words, or Contempt for which it was imposed, ought to be shewn in particular. R. 1 Vent. 336.

If 6*l.* be assessed for a Fine for not presenting a *Certum Letæ*, it will be excessive. Semb. 11 Co. 44.

But a Fine of 40*s.* for a Contempt in Court is not excessive. Ray. 68.

Nor 5*l.* for refusing to be Constable. 8 Co. 38.

Nor 40*l.* for refusing to impanel a Jury. Kit. 41. b.

How a Fine shall be collected and answered to the King, *Vide in Prærogative*, (D. 51, &c.)

(O) Amerciament.

(O. 1.) When it may be imposed. In a Leet.

SO for an Offence in the Leet, not done in the Presence of the Steward, or in Contempt of the Court, a Man may be amerced.

[When an Offence is presented by the Jury, the Punishment is by Amerciament, not Fine, tho' it be a Contempt. *Moore v. Wicker*, M. 11 G. 2. Andr. 47.]

As, for not doing Suit. Cro. El. 241. Mo. 89. Kit. 43. a.

Or not paying *Certum Letæ*. 13 H. 4. 9.

For a Nuisance done. Kit. 43. a.

But there shall not be an Amerciament in the Leet for a Trespass done to the Lord himself; for he shall not be Judge in his own Cause. 1 Rol. 211. l. 25. 12 H. 4. 8. b.

Nor, for Non-payment of a Rent to him, for which he may distrain. 1 Rol. 211. l. 10.

Nor, for a Neglect in keeping a Tumbrel, or Stocks; for the Lord of the Leet ought to do it. R. Mo. 573. Cro. El. 698.

Nor, for leaving his Gates open to the Nuisance of the Inhabitants; for it does not appear to the Leet. R. Mo. 356.

Nor, for digging Coney-burrows in the Lord's Waste. R. Ray. 160.

Nor, for encroaching upon the Waste, and building a Cottage there. R. 1 Sand. 135.

Nor, for any private Nuisance, or Thing, to the Damage of the Lord or any other. 1 Sand. 135.

(O. 2.) How assessed.

An Amerciament ought to be imposed with Mercy, and therefore it is called, *Misericordia*. Co. L. 126. b. 8 Co. 41. F. N. B. 75. E. H.

By the St. M. Ch. 9 H. 3. 14. *Nullus liber Homo amercietur nisi secundum Modum Delicti, salvo Contentamento, Mercator salva Merchandizâ, Villanus salvo Wainagio, Ecclesiastica Persona secundum Laicum Tenementum, &c.*

And therefore, it shall be proportioned according to the Offence to the Lord, and not the Damage to the Tenant. F. N. B. 75. E.

The Arms of a Soldier are his Contentment, and the Books of a Scholar, &c. 2 Inst. 28.

But the Amerciament of a Duke shall be 10*l.* Of an Earl, or Bishop 5*l.* Ibid.

And

And if he be amerced as a Baron, when he does not hold by Barony, it may be pleaded in Discharge. *Mad.* 367.

By the *St. M. Ch.* 14. *Misericordia non ponatur, nisi per Sacramenta proborum & legalium Hominum de Vicineto.*

And therefore, when it is fixed by the Court, it must be affeered and moderated by others. *F. N. B.* 75. *G. R.* 1 *Rol.* 542. *l.* 20. *Hob.* 129. *R.* 3 *Lev.* 206.

In a Court-Baron, by the Tenants of the same Court upon Oath. *F. N. B.* 76. *D.*

If it be affeered without Affeement, the Party shall have a Writ upon *M. Ch.* 14. and thereon an *Alias*, *Pluries*, and Attachment. *Ibid.*

Or, if it be outrageous, a Writ *de moderatâ Misericordiâ.* *F. N. B.* 75. *A. Noy* 20.

And it ought to be affeered at a Sum certain. *R.* 1 *Rol.* 542. *l.* 20.

Or reduced to a Certainty by Affeement. *3 Mod.* 138.

And affeered upon each severally. *F. N. B.* 75. *G.*

[A general Amerciament is good, if it is afterwards reduced to a Certainty by Affeement. *Moore v. Wicker*, *M.* 11 *G.* 2. *Andr.* 47.]

Or, by Custom, it may be a Sum certain, without Affeement. *Semb.* 2 *Mod.* *Ca.* 299.

But an Affeement by the Steward is void. *8 Co.* 41.

Or, by four of the Jury. *D. Cro. Car.* 275.

Or, by the whole Jury; for it ought to be affeered by Officers chosen by the Steward, and sworn for that Purpose. *3 Lev.* 206. But now it may be affeered by the Jury. *Semb. Sbo.* 62.

[Amerciament of a Freeholder, must be affeered by Freeholders of the Manor, *Baldwin v. Tudge*, *H.* 28 *G.* 2. *2 Wils.* 20.]

Yet if the Jury affeers the Amerciament, it is sufficient, without other Affeement. *8 Co.* 40. *b.* *Semb. Cont. Jon.* 301.

If an Issue be, whether *A.* and *B.* were Affeers, it shall be tried by the Record, not by the Country. *Cro. El.* 860.

By the Equity of the *St. W.* 1. *3 Ed.* 1. 18. The Clerk of the Warrants estreats the Amerciaments in *C. B.* and delivers them to the Clerk of Assise to be affeered by the Coroners, and they are afterwards redelivered to the Clerk of the Warrants, who with the Justices of *C. B.* delivers the Roll to the *Exchequer.*

So, the Amerciament in *B. R.* or before Justices of Assise. *F. N. B.* 76.

If the Plaintiff be nonsuited, when a Verdict is ready to be delivered, the Amerciament shall be affeered by the Jury. *R.* 8 *Co.* 39. *b.*

An Amerciament upon a Sheriff, Gaoler, or other Minister of Justice, shall be affeered by the Justices of the Court, and the Entry shall be, *Ideo in Misericordiâ et afferatur per Just.* for it is out of *M. Ch.* or the *St. W.* 1. 18. *8 Co.* 40.

(O. 3.) When upon a Town, County, &c.

So a Town, Hundred, or County may be amerced for Murder or Manslaughter committed there. *Mad.* 374, 377.

So, for other Misdemeanors. *Mad.* 378.

As, for not making Hue and Cry. *Mad.* 386.

Permitting the Escape of a Felon. *Mad.* 387. *Adm.* 1 *Leo.* 107. *3 Leo.* 207.

Concealment of Homicide. *Mad.* 389.

But if a Felony be done in the Night Time, and the Felon escape, a Town in the County shall not be amerced for it. (*Vide* 1 *Leo.* 107. *3 Leo.* 207.)

So, if a Felon give a mortal Wound in the Day Time of which the Party dies in the Night; for till Death it is no Felony. *Semb.* 3 *Leo.* 207.

But the King's Demesnes were discharged of so much of the Amerciament as was charged upon them. *Mad.* 374.

So, Lands in the Possession of the Queen. *Ibid.*

So, the Barons of the *Exchequer*, for themselves and their Tenants. *Mad.* 375.

And Ecclesiastical Persons, for an Ecclesiastical Fee. *Ibid.*

So, the Lands of him who has the King's Grant for his Discharge. *Mad. 374.*
So an Amerciament must be reasonable, otherwise the Lord shall not have an Action for it. *Semb. Carth. 184.*

(O. 4.) In Actions.

In all Actions Real or Personal, if the Writ abates by the Act of God, and not by the Default of the Party, the Demandant, or Plaintiff, shall not be amerced: As, if it abate by the Death of the Demandant, or Plaintiff. *Co. L. 127.*

So, where several join in a Suit, which fails for the Default of one only, the others who were not in Default shall not be amerced: As, if one Plaintiff be nonsuited, (in a Case where the Nonsuit of one will be the Nonsuit of both, he who appears shall not be amerced. *8 Co. 61. a. 1 Rol. 213. l. 49.*

So in Judicial Process, if the Writ abates, or the Plaintiff be nonsuited or barred, the Plaintiff shall not be amerced; because the Suit is founded upon a Record. *8 Co. 61. a. 1 Rol. 214. l. 4, 16.*

As, in a *Quid Juris clamat.*

In a *Scire facias, &c.* *11 H. 4. 7. a.*

So, if the Plaintiff discontinue he shall not be amerced: for it is the Act of the Court. *8 Co. 61. a. 1 Rol. 225. l. 1.*

Nor, if the Court be ousted of Jurisdiction. *8 Co. 61. b.*

So, if the Plaintiff recover upon all the Causes of Action contained in the Declaration, he shall not be amerced, tho' he recover less than was demanded: As, if the Plaintiff declare *ad Dampnum 40 l.* and recover only *20 l.* *Cro. El. 257.*

If there be *Trover* for 500 Load of Goods, &c. and he recovers but for 100 Load.

So in an Action against several, if he recover against each for Part. *R. 1 Rol. 217. l. 45.*

Or, against Husband and Wife, if the Husband be acquitted; for he must be joined for Conformity. *8 Co. 61. a. 1 Rol. 217. l. 46.*

So in an Action for Words, if it be found for the Plaintiff as to all the material Words, tho' it be against him for Words not material. *R. 1 Rol. 217. l. 12. 2 Dy. 75. a.*

In Wait for cutting down twenty Trees, if it be found for the Plaintiff only for two. *Per Berkly, but the other J. dub. Cro. Car. 453.*

In Ejectment for a Manor, and it be found for the Plaintiff for the Manor, but not as to the Services. *R. 1 Sid. 232.*

So, if the Plaintiff join Issue to Part, and demur to the other Part, and the Demurrer be adjudged for him, whereupon he enters a *Nolle prosequi* as to the Issue. *R. 1 Rol. 217. l. 5. R. 2 Mod. Ca. 198.*

So, if the Defendant, or Tenant in all Actions Real or Personal, which do not charge Force or Deceit, comes at the first Day, and renders the Thing demanded, he shall not be amerced. *R. 5 Co. 49. b. 8 Co. 61. b. 1 Rol. 212. l. 20, 27, 51.*

So, if he comes at the first Day, and makes Defence by Attorney, and pleads *Non sum informatus*; for that is the same as to the Plaintiff, as if he had confessed the Action. *R. 1 Rol. 213. l. 1, 17.*

So the King, or Queen, shall never be amerced. *8 Co. 61. b.*

Nor an Infant, generally; for the Entry shall be, *Sed nihil de Misericordia quia Infans.* *Dy. 338. b. Adm. Cro. Car. 410. R. 1 Rol. 214. l. 50.*

And if an Amerciament be entred against an Infant, he shall be pardoned of Course, and the Entry shall be, *Ideo in Misericordia, sed pardonatur quia Infans.* *8 Co. 61. b. 1 Rol. 214. l. 41.*

Tho' the Infant be a Defendant with others in Ejectment, Trespass, &c. *R. 2 Cro. 274.*

But in all Actions Real or Personal, if there be a Default in the Plaintiff, or Demandant, he shall be fined, or amerced.

(O. 4.)
When a Plaintiff or Demandant, Defendant, or Tenant, &c. shall not be amerced.

(O. 4.)
When a Plaintiff or Demandant, Defendant, or Tenant, &c. shall not be amerced.

(O. 4.)
When a Plaintiff or Demandant, Defendant, or Tenant, &c. shall not be amerced.

(O. 5.)
When a Plaintiff, or Demandant shall be amerced.

And therefore, in all Writs of Entry, *Præcipe quod reddat*, *perpetuum*, or *faciat*, if the Writ abates for Matter or Form, or the Demandant be nonsuited or barred, he shall be amerced. 8 Co. 60. b.

So in all Personal Actions, which charge with Force and Deceit, and which do not, if the Writ abates for Matter or Form, or the Plaintiff be nonsuited or barred, he shall be amerced *pro falso Clamore*. 8 Co. 61. a.

So, if he enter a *Retraxit*, he shall only be amerced, tho' he be in Contempt of the Court. 8 Co. 60. a.

So in all Actions Real or Personal, if the Demandant or Plaintiff be barred for Part of his Demand, tho' he recovers for other Part, he shall be amerced. Dy. 89. a. 8 Co. 61. a. R. Mo. 692. R. Cro. El. 699. Vide Ante, (O. 4.)

Or, if there be several Tenants or Defendants, and he be barred as to one, or as to Part against one, tho' he recovers against the others. R. 1 Rol. 216. l. 10. 2 Cro. 630.

As, in Covenant for several Covenants broken, if he recover upon one, and be barred as to the Residue. R. 1 Rol. 216. l. 35.

In *Assumpsit* upon several Promises, and he recover only upon one.

Or *Assumpsit* for several Things, if he recover only for one, and be barred for the other, tho' the *Assumpsit* was intire. 1 Rol. 216. l. 40.

In Writ in *Domibus & Gardinis*, if he recover only for Writ in *Domibus*. Cro. Car. 453. 1 Rol. 217. l. 17.

So in all Actions Real or Personal, if the Plaintiff recover, the Tenant, or Defendant, shall be amerced, or fined: unless where he comes the first Day in Actions which do not charge Force or Deceit.

In all Writs of *Præcipe*. 8 Co. 60. b. He shall only be amerced.

So, in an Affise for Rent, where the *Disseisin* was only by Denial, 1 Rol. 223. l. 25.

In an Attaint, where the Defendant was only Tenant by Receipt. 8 Co. 60. b.

So in all Personal Actions, which do not charge with Force or Deceit, the Defendant shall only be amerced: As, in Account. 8 Co. 61. a. R. Cro. El. 107.

In *Assumpsit*. 1 Rol. 222. l. 1.

In an Action upon the Case. 1 Rol. 222. l. 40.

Tho' it be upon the Custom of the Realm; as, against a Carrier, Hostler, &c. R. 2 Cro. 224.

Tho' it be an Action upon the Case for a Deceit. 8 Co. 59. b. In *Trover*. R. Sav. 37.

In an Action upon a Statute for Non-feasance: As, upon the *Stat. of Wint.* or the *Stat. 2 Ed. 6.* for not setting out Tithes. Vide Post, (O. 8.)

So, in Action for *Scandalum Magnatum*. Semb. 1 Lev. 148.

So the Defendant shall be only amerced, if he deny the Deed of another, or if, *relicta Verificatio*, he confess the Action after Denial of his own Deed. Vide Post, (O. 8.)

In an Appeal for Felony or Mayhem, if the Writ abates by the Default of the Plaintiff, or he be nonsuited or barred, the Plaintiff shall be fined, and the Entry of the Judgment shall be by *Capiatur*. 8 Co. 60. a.

So, in an Attaint. Ibid.

So, in a Recaption; unless it be brought in a County Court, which not being a Court of Record, there can be no Fine. 8 Co. 60. b.

So, where the Plaintiff appears to be vexatious: As, if he sue in C. B. and also in London, or other Court, for the same Cause. 8 Co. 60. a.

So, in Trespas, if the Verdict be against the Plaintiff. 1 Rol. 225. l. 20.

So in all Actions *Vi & Armis*, or which charge the Defendant with Force or Deceit, if there be Judgment against him, he shall be fined. Dy. 89. a. 8 Co. 59. b.

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(O. 6.)
When a Tenant, or Defendant.

(O. 7.)
When there shall be a Capiatur. Against the Plaintiff.

(O. 8.)
Against the Defendant.

As, in Trespass for an Assault and Battery. *8 Co. 81. a. 1 Rol. 222. l. 26.*
 In Rescous, tho' it be in the Nature of an Action upon the Case. *1 Rol. 222.*

l. 30. Hob. 180.

In Assise, if the *Disseisin* be found to have been with Force. *8 Co. 59. b.*

In a Writ of Deceit upon a Recovery by Default in a Real Action, if Non-
 summons be found. *Ibid.*

In an Attaint, if the Defendant was a Party to the first Record. *8 Co. 60. a.*

So in all Cases, where the Defendant is fined, the Judgment ought to be,
quod Capiatur: As, in an Indictment, &c. *R. 1 Rol. 225. l. 25. Cro. Car. 340.*

Jon. 407.

Or, if he be present, he shall be committed, and then no *Capiatur* is neces-
 sary; and if the *Ideo in Misericordia* be also entred, it is Surplusage. *R. Cro.*

Car. 340.

So, if the Defendant deny his own Deed, and it be found against him, he
 shall be fined. *Dy. 67. b. 8 Co. 60. a. Dy. 245. b. 1 Rol. 219. l. 46. 224.*

l. 15. 33 H. 6. 54. b. 2 Sand. 192.

Or, if he plead a false Deed made to himself. *8 Co. 60. a. 1 Rol. 219. l. 45.*

224. l. 17. 2 Cro. 255.

Otherwise, if he plead a false Deed to another, or deny the Deed of another,
8 Co. 60. a. 1 Rol. 224. l. 37.

Or deny his own Deed, or plead a false Deed to himself, if, *relictâ Verifi-*
catione, he confesses the Action. *R. 33 H. 6. 54. b. D. Cont. Dy. 67. 8 Co.*

60. a. Per 2 J. acc. Gawdy cont. 2 Cro. 64. R. acc. 1 Rol. 224. l. 42. 2 Cro.

420. Dub. per Twisden, sed Sand. Semb. acc. 2 Sand. 192. Dub. Ray. 195. 202.

So, in Replevin, if the Defendant claims Property, and it is found against him
 in a *Proprietate probandâ*. *8 Co. 60. a. 1 Rol. 224. l. 37.*

So in all Actions, where the Defendant is charged for a Contempt against
 the King's Writ: As, in a *Quare incumbravit*, *Quare non admittit*, Prohibition,
 &c. *Ibid.*

So in all Actions upon Statutes, where the Defendant is not sued for a Duty:
 As, in Ravishment of Ward. *8 Co. 60. a. 1 Rol. 224. l. 37.*

In Debt upon the *St. of Marl.* 52 H. 3. 1. or the *St. 1 & 2 Ph. & M. 12.*
 for carrying a Distress out of the County. *R. 1 Rol. 222. l. 42. 45. 2 Dy.*

177. b.

In Debt upon the *St.* against Usury. *R. 1 Rol. 223. l. 5.*

Otherwise, in an Action upon a Statute for Non-feasance: As, upon the *St.*
 of Wint. against the Hundred. *R. 2 Cro. 348.*

Or in Debt upon the *St. 2.* (or 2 & 3) *Ed. 6. 13.* for not setting out his
 Tithes. *1 Rol. 223. l. 10. R. Shp. 81.*

So now, by the *St. 5 & 6 W. & M. 12.* In Trespass, Ejectment, Assault, or
 False Imprisonment, no Fine or *Capiatur pro Fine* shall be charged, but the
 Plaintiff in Satisfaction of it shall pay 6s. 8d. on the Judgment, which shall
 be allowed him in Costs.

And therefore, if a *Capiatur* be now awarded in such a Case, it will be Er-
 ror. *R. 5 Mod. 285.*

And since the Statute no Fine or *Capiatur* is entred in *B. R.* *1 Sal. 54.*

In *C. B.* the Entry is, *Nihil de Fine quia remittitur per Statutum.* *Ibid.*

The Plaintiff may be amerced several Times. *1 Rol. 218. l. 10, 15. 8 Co. 61. a. (O. 9.)*

But the Defendant shall be amerced only once. *8 Co. 61. a. R. 5 Co. 58. b. When several*

Tho' he plead several Pleas. *5 Co. 58. b. Amercia-*

Or confess for Part, and plead to Issue to the other Part, which is also against
 him. *Ibid.*

Yet, if the Defendant pleads several Pleas, and both are against him, there
 may be an Amerciament against him upon one, and a *Capiatur* upon the other.
R. 1 Rol. 213. l. 30.

So, in an Account upon a Judgment *quod computet*, the Defendant shall be
 amerced, and again afterwards, if he be found in Arrear upon a final Judgment
 against him. *1 Rol. 218. l. 10.*

So,

So, if a Defendant or Tenant confess a Judgment for Part, and plead to another Part, upon which Judgment is afterwards against him, there may be a several Amerciament upon each Judgment. *R. 1 Sal. 253.*

For both the Judgments are final and independent. *1 Sal. 54. 5 Mod. 65, 67. Skin. 593.*

So, if there are several Defaults by the same Defendant, there may be several Amerciaments against him. *2 Leo. 4, 185.*

So, if there are several Defendants who plead severally, they may be severally amerced. *5 Co. 58. b.*

(O. 10.) Remedy for an Amerciament.

(O. 10.)
By Distress.
When and how
it shall be af-
fected, *Vide*
Ante, (O. 2.)
Vide Distress,
(A. 1, 3.—
B. 3.)

If an Amerciament in a Leet be affected, the Lord may distrain for it of Common Right, without Prescription. *R. 2 Cro. 382. 8 Co. 41. Kit. 43.*

A Distress for an Amerciament may be in any Place within the Precinct of the Manor. *Semb. Noy 20.*

So it may be upon any Goods of the Offender. (*Vide Noy 20.*) *Vide Distress*, (B. 3.)

So, if an Amerciament be upon a Vill, the Distress may be for the Whole upon any in the Vill, if he was an Inhabitant there at the Time of the Amerciament. *R. Cro. El. 698.*

But a Distress cannot be taken for an Amerciament in a Place out of the Jurisdiction.

Nor can the Goods of a Stranger be taken, tho' they be upon the Land of the Offender. *Semb. Noy 20.*

So the Bailiff cannot distrain for it *ex Officio*, but he must have the Steward's Precept. *Per Popb. Gawdy cont. Cro. El. 698. Mo. 574. R. 3 Mod. 138.*

And if he justifies in Trespass, he must shew the Precept. *R. 3 Mod. 138.* Otherwise, in *Replevin*. *Adm. 3 Mod. 138.*

So, if the Defendant justifies by Distress for an Amerciament upon a Vill, he must alledge that no one else has paid it. *R. Cro. El. 698. Mo. 574.*

(O. 11.)
By Debt.

So Debt lies for an Amerciament affected. *R. 2 Cro. 382. Adm. 2 Cro. 582. Kit. 43. b.*

[Amerciament of a Freeholder must be proved to be affected by Freeholders of the Manor, or Debt will not lie for it. *Baldwin v Tudge, H. 28 G. 2. 2 Wils. 20.*]

L E E T G A C Y.
Vide Administration, (O. 3, 5, &c.)—*Chancery*, (3 A. 3, &c.)—*3 G. 3, &c.*—*3 Y. 1, &c.*—*Prohibition*, (G. 17.)

L E G A T E.

Vide Popery, (A. 2.)

L E G A T E.

Vide Chancery, (3 G. 3, &c. 7.—3 Y. 18, 19.)

LEPROSY.

LEPROSY.

(A) Leprosy.

THERE are many Sorts of Leprosy. *F. N. B. 234. G.*

(B) How restrained.

IF a Man, who is a visible Leper, will intrude himself into a Church, or the Company of his Neighbours, to their Nuisance, or Disturbance, a Writ shall be directed to the Mayor, Bailiff, &c. of the Town to inquire, whether he be a Leper, & *tunc honestiori Modo, quo poterit, a Communicatione Hominum amoveret, &c.* *F. N. B. 234. D.*

And if he will not execute the Writ, they shall have an *Alias, Pluries*, and Attachment. *F. N. B. 234. F.*

But if he does not appear to be a Leper by the visible Putrefaction of his Flesh, and the Smell of his Ulcers, he shall not be removed. *Semb. F. N. B. 234. G.*

Or, if he be a visible Leper, if he keeps himself within his House. *F. N. B. 234. G.*

LETTERS.

Letter of Attorney.

Vide Attorney, (C. 1, &c. 5, &c.)

Letters Patent.

Vide Patent.

Letter to a Peer.

Vide Chancery, (D. 2.)

LEVARI FACIAS.

Vide County, (C. 10, 13.)—Execution, (C. 3.)—Process, (E. 4.)—Statute-Staple, (D. 3.)

LEVEE.

Vide Sewers.

LEVITICAL DEGREES.

Vide Baron and Feme, (B. 4.)

LEVYING WAR.

Vide Justices, (K. 4.)

L O E Y.

(A) What Laws are allowed in England.

DIVERS Laws are used, and allowed within the Kingdom of England, which are all Part of the Laws of the Realm. *Co. L. 11. b.*

The Law of the Realm is, *Scripta, vel non Scripta.*

As to the Law in Writing or Statute Law, and the Laws and Usages of Parliament, *Vide Parliament*, (G. 1, &c.—H. 1, &c.)

The Law, not in Writing, comprehends the Common Law, strictly so called, and the particular Laws allowed in Peculiar Courts in Peculiar Cases.

As to the Canon, and Civil Law allowed in the Ecclesiastical Courts, in the Admiralty, and the Court of Chivalry, *Vide Admiralty.—Canons.—Courts*, (E. 1, &c.)

The Common Law, strictly so called, regulates the Proceedings in the usual Courts of Justice, and if it be applied to criminal Cases is called, *The Crown Law. De quâ Vide Justices, and Justices of Peace.—Vide Action*, (D. 1.)

If it be applied to the Affairs of the King, it is termed, *The Prærogative Law. De quâ Vide Prærogative.*

If to Matters within the Forest, &c. it is termed *Lex Forestæ. De quâ Vide Chase.*

If to Trade or Commerce it is called *Lex Mercatoria. De quâ Vide Merchant*, (D.)

If to Customs of particular Places, the Name varies according to the Places: As, in Ireland, they are termed, *The Laws of Ireland. Of which Vide Ireland.*

In Scotland, *The Laws of Scotland. Of which Vide Scotland.*

In Jersey, Guernsey, Man, &c. *The Laws of Jersey, Guernsey, or Man, &c. Vide Navigation*, (F. 2, 3, 4, 5.)

In the Plantations, *The Laws of the Plantations. Vide Navigation*, (G. 1, &c.)

As to Laws in Wales, *Vide Wales.*

(B) The Original, and Grounds of the Common Law.

THE Foundations of the Common Law are, 1. The Law of Nature or Reason. 2. The Divine Law. 3. General Customs. 4. Divers Principles, or Maxims. 5. Several particular Customs. *D. & St. Dial. 1. ch. 4. at the End.*

And it was called, *The Common Law*, because the Code of Laws, collected by *Edward the Confessor* out of the Laws before used in the several Provinces during the Heptarchy, was common to the whole Realm. *1 Ch. R. Arg. 60.*

(C) What Realms are governed by the Laws of England.

THE Common Law is the Inheritance of all the Subjects of the Realm.

And therefore in the Plantations, or elsewhere; where Colonies of *English* are settled, they are to be governed by the Law of England. *Ca. Parl. 31. Vide Navigation*, (G. 3.)

If the King makes a Conquest of an Infidel Kingdom, the antient Laws are abrogated *ex instanti*, and it ought to be governed by such Laws as the King appoints. *7 Co. 17. b. Calvin. Ca. Parl. 31.*

So, if the Laws of England are once established in another Realm, which the King obtains by Conquest, they cannot afterwards be altered, except by Parliament. *7 Co. 17. b. Calvin.*

So, if a Foreign Territory, not inhabited, be obtained by the Crown of England, all Laws in England bind there. *R. Sal. 411.*

But if a Conquest be made of a Christian Kingdom, the antient Laws remain there, till they are altered. 7 Co. 17. b, Calvin. R. 4 Mod. 225.

So, if a Christian Kingdom descend to the King, the antient Laws cannot be altered, but by Parliament. 7 Co. 17. b, Calvin.

So, if an Infidel Kingdom be gained by Conquest, tho' the Laws there are abolished, yet the Laws of England are not of Force, till it be so declared. R. Sal. 411.

And till the Laws of England are declared to be of Force there, such Infidel Kingdom, gained by Conquest, shall be governed by their antient Laws, which are not contrary to the Law of God, (for those do not seem to be absolutely abolished till other Laws are introduced,) or by the Rules of natural Equity. Sal. 412.

(D) Professors of the Law.

(D. 1.) Apprentices.

THE Professors of the Law, till 2 H. 3. were usually of the Clergy. Dug. O. 7. 21. or rather till the Year 1164. Temp. H. 2. when by the Canon in Sinodo Turonensi sub Alex. 3 Papâ, it was ordained, *Quod post Votum Religionis nullus ad Physicam vel Leges mundanas legendas permittatur exire.* Seld. Diff. ad Fl. 519.

By the St. W. 1. 29. *Si ul Serjeant, Counter, ou auter face ul Maner de Disceit, ou de Collusion en la Court le Roy, ou consent de faire la, en Disceit de la Court, pur engin' le Court, ou la Partie, et de ceo soit atteint, lors puis eit la Prisonment dun An et un Jour, et ne soit oye en la Court le Roy a counter pur nulluy. Et si soit auter que Counter, per mesme le Manner eit la Prison dun An et dun Jour a tout le meins. Et si le Trespass demande greinder Paine soit a volonte le Roy.*

And this extends to a Serjeant, and also to an Apprentice of the Law, 11 Ed. 4. 3. 2^d Inst. 214.

And if an Apprentice refuse to be Counsel for any, when assigned by the Court, he may be excluded from the Bar. 11 Ed. 4. 3.

(D. 2.) Serjeants of the Law.

The Serjeants of the Law are commanded by the King's Writ to take this State and Degree; for by the Chief Justice of C. B. by the Assent of all the Justices, the Names of the most worthy in the Study of the Law are presented to the Chancellor, who by the King's Writ assigns a Day to them to take *Statum & Gradum Servientis ad Legem sub Pœna, &c.* Fort. c. 50.

(D. 2.)
How created.

If they do it not at the Day of the Return of the Writ, they shall be at the King's Mercy. 2 Rol. 167. l. 10.

And *ex Rigore*, they cannot take it afterwards. 2 Rol. 167. l. 17.

If their Creation be void, as in the Time of the Usurpation, they may be required *de novo*, to take the same State and Degree. 1 Sid. 3.

If the Writ be returnable *immediatè*, whereupon the Serjeant appears before the Chancellor in the Vacation, and is sworn, it is not legal. R. Cro. Car. 2. Jon. 63.

After the Writs to the Serjeants, they appear before the Justices of one of the Benches, and make their Counts, &c. and being robed with Coifs, &c. go to Westminster attended by the Marshal, Warden, Benchers, and others of their respective Societies, and there make Counts, &c. *de novo*, and afterwards return to Serjeants-Inn, and make a Feast there. Cro. Car. 4. Jon. 63.

The Serjeants have Precedence according to their Antienty in Admittance.

If a Man created a Serjeant was before Speaker of the House of Commons, he shall take Place according to his Admittance, and shall not have Precedence of the other Serjeants. R. per Popb, and the greater Part of the Judges and Barons, the Lord Keeper, four Judges and twelve Privy Counsellors cont. 2 Cro. 2.

A Ser-

(D. 3.)
What Privi-
leges belong
to them.

A Serjeant of the Law has Privilege for himself and his Clerks, that they shall not be sued but in the Courts of *Westminster-hall*.

And therefore, if they are sued in the *Marshalsea*, &c. an Inhibition shall go out of C. B. to surcease. *R. Cro. Car. 84.*

But the Privilege does not extend to a Court in *Westminster-hall*, and therefore he may be sued in B. R. for he may practise there. *R. 2 Lev. 129.*

[A Serjeant sued in B. R. may plead his Privilege, that he ought to be sued in C. B.; but if he has long retired from the Bar it shall not be allowed. *Serjeant Mead's Case. 2 Wils. 232.*]

So the Privilege does not extend to a Prohibition. *Dub. 1 Sid. 65.*

So a Serjeant shall have Privilege to sue by Attachment of Privilege, and not by Writ.

Tho' he sues as Heir. *Pet Englef. Fitz. cont. Dy. 24. a.*

But he shall be sued by Original Writ, and not by Bill. *Semb. 11 Ed. 4. 2. b.*

And if he be sued by Bill, he may plead his Privilege. *11 Ed. 4. 2. b.*

[A Serjeant cannot prevent the Venue being changed, unless he sues by Writ of Privilege. *Barnes 484.*]

So a Serjeant at Law shall serve upon a Jury, for Necessity, where a Peer is Party to the Action, and there is no other Knight who has a Freehold in the County. *2 Mod. 182.*

If he does not serve as Counsel when assigned by the Court, he may be excluded from the Bar. *11 Ed. 4. 3.*

The assigned by the Ch. Justice of B. R. *Ibid.*

But a Serjeant may be discharged by the King's Writ, of his Title and Degree. *Dudg. 140.*

So the Acceptance of the Office of a Judge, Commissioner of the Great Seal, &c. discharges him from the Office of King's Serjeant. *R. 3 Lev. 351.*

But the Office of a Judge, or Baron, does not discharge him from the Degree of a Serjeant. *3 Lev. 351.*

Nor the Office of Commissioner of the Great Seal. *R. 3 Lev. 351.*

Nor a Patent to be a Peer of the Realm.

Art of Law.

Vide Condition, (L. 13.)

Authority of Law.

Vide Imprisonment, (H. 4, &c.)

Enacting of Laws.

Vide Parliament, (G. 10, &c.—R. 3, &c.)—Prærogative (D. 1.)

L. E. Y. - G. A. G. E. R.

Vide Wager of Law.

L. I. B. E. L.

(A) Libel; What shall be.

A Libel (*Libellus famosus*) is a Contumely, or Reproach, published to the Defamation of the Government, of a Magistrate, or of a private Person. And it may be in Writing. *5 Co. 125. b. Vide infra.*

As,

As, if a Man publishes a Rhyme, Epigram, or other Writing made to the Defamation of another, &c. 5 Co. 125. b.

Writes a Letter, and sends it to another. R. 12 Co. 35. Vide Post, (B. 1.)

Or it may be without Writing; * as, if he makes a Picture in an ignominious [*Vide Sal. 418.] Manner, or any ignominious Sign to the Reproach of another. 5 Co. 125. b.

If he makes the Sign of a Gallows, &c. upon the Door of any one. Ibid.

[If a Mayor send a Licence to keep a Publick-house, to a Peer. Mayor of Northampton's Case, P. 7 G. Str. 422.]

(A. 1.) In Defamation of the Government.

So, if he makes the King's Arms, with a Text that insinuates Calumny, in a Church. Sav. 49.

If he writes, *Preachers run to the Queen as tho' they were to be directed by her to tarry for Reformation.* R. Sal. 49.

(A. 2.) Of a Magistrate.

So a Libel against a Magistrate tends to the Scandal of the Government. 5 Co. 125. a.

It will be a Libel, if A. delivers a Writing to a Parson to be published in a Church, which says, *Bewail the Sodomy and Wickedness in this City which go unpunished by the Magistrate*, tho' it does not say, that the Magistrates knew it. R. 1 Sid. 219.

If one writes to a Privy Counsellor, *that the Chief Justice, &c. will do Nothing by the Command of the King.* 3 Inst. 174.

So a Libel on One who was formerly a Judge, which charges him with Perjury, &c. in his Office, when he was a Judge. R. Cro. Car. 175. 1 Sid. 271.

So Words of a Justice of Peace, which affect him in his Office, are indictable, tho' they are not actionable: As, *A. is a buffle-headed Fellow, doth not understand Law, and hath not done B. Justice.* R. 3 Mod. 139. Comb. 65. Vide Post, (C. 1.) *

So, tho' he might have an Action for the same Words. R. Carth. 15. *

So, Words, of a Judge, which reflect upon him. 1 Sid. 271. Cro. Car. 504. *

* [These seem not to be Libels.]

(A. 3.) Of a Private Person.

So a Libel against a private Person deserves severe Punishment; for it incites the whole Family to Revenge, and by Consequence tends to Quarrels, and the Breach of the Peace. 5 Co. 125. a. R. per 3 J. 1 Sid. 270. 1 Lev. 139.

As, if one writes to a Woman to whom B. is Suitor, *that B. has the Pox, and is not worth a Groat.* R. 1 Sid. 271.

To his Debtor, *that if he had Honesty, Civility, or Humanity, he would not deal so, but would go to Hell and be damned for Cheating.* R. Ray. 201.

[If one publish an Advertisement of a Tradesman, that tho' he pretends so and so, yet all Gentlemen should be cautious, for he dares not engage with any Artist in Town; it is a Libel, and actionable. *Herman v. Delany*, P. 4 G. 2. Str. 898.]

[Any Thing that tends to make a Man ridiculous, or to hinder Men from associating with him, is a Libel; as that he stinks of Brimstone, and is *an old sinking, old nasty, old itchy, old Toad.* *Villers v. Monsley*, P. 9 G. 3. 2 Wilf. 403. *Rex v. Benfield*, P. 33 G. 2. 2 B. M. 980.]

So it will be a Libel, tho' wrote in *French*, or other foreign Language. 3 Inst. 174.

If it be a Translation of a Declaration in Prohibition, &c. distributed with Intent to disparage. 2 Mod. 119.

If he publishes in Writing, tho' in Words not actionable. F.g. 121, 253.

Tho' it be true; for it tends to private Quarrels and Revenge. R. 5 Co. 125. b.

Tho' the Person against whom be of ill Fame. 5 Co. 125. b.

Tho' the Magistrate or private Person, upon whom the Libel is made, was then dead. *R. 5 Co. 125. a.*

So making a Libel is punishable, tho' it be not published. *R. 5 Mod. 167.*

And he who procures another to make a Libel, will be a Contriver. *R. Mo. 813.*

If *A.* dictates to *B.* who writes a Libel, both are Makers. *R. 5 Mod. 167.*

So he who approves it, when wrote. *Ibid.*

(B) Publication.

(B. 1.) What shall be.

A Libel may be published by Speaking, Singing, or Delivery. *5 Co. 125. b.*

As, if a Libel be maliciously repeated in the Presence of others. *5 Co. 125. b.*

As, if after Hearing or Reading, he reads it. *R. 9 Co. 59. b. Mo. 813.*

Or, relates the Effect of it. *12 Co. 35. Mo. 813.*

Or, speaks it by way of Question, *Did not you hear that A. did so, &c.?* *R. 12 Co. 134.*

So, if a Libel be maliciously sung in the Presence of others. *5 Co. 125. b.*

So, if he sends a Servant for a Paper who mistakes, and then he fetches a Paper which is read, and is a Libel, he will be the Publisher. *Semb. 5 Mod. 167.*

So, if a Libel, or a Copy be delivered to another. *5 Co. 125. b. Mo. 813.*

Or the Copy of a Letter, written by himself to the Scandal of another, be dispersed. *R. 12 Co. 35.*

So, if any Letter that contains a Libel is sent sealed to another. *12 Co. 35.*

Or sent to the Party himself, against whom it is made. *R. 12 Co. 35. R. Hob. 62, 215. Popb. 139.*

If he lends the Libel to another to be copied. *R. Mo. 813.*

So he who procures the Publishing, as well as he who publishes, is a Publisher. *Ibid.*

As, if the Servant of *A.* who has a Shop for the Sale of Pamphlets, sells a Libel in the Shop for the Benefit of *A.* tho' *A.* was not privy to the Contents, or Sale. *R. F.g. 47.*

So, if a Man writes a Copy of a Libel, it will be Evidence of a Publication. *Sal. 418.*

Or, if he has in his Custody a Libel publicly known. *Ibid.*

But the Having a Copy of a Libel not published, in his Custody, is not Evidence of a Publication. *Ibid.*

(B. 2.) What not.

But if a Man finds a Libel and burns it, or delivers it to a Magistrate, when it concerns a private Person, it will not be a Publication. *R. 5 Co. 125. b.*

So, if it concerns a Magistrate, he ought to deliver it to the Magistrate, to have Inquiry made for the Author. *Ibid.*

And if he did not, he might have been punished in the Star-Chamber.

But, tho' he does not, but keeps it to himself without any Publication, he is not now punishable for the Libel. *Per Cur. 1 Vent. 31.*

So it will not be a Publication of a Libel, if he takes a Copy of it, if he never publishes the Copy. *Semb. cont. Sal. 418.*

If he reads, or hears a Libel read, not knowing that it was a Libel. *R. 9 Co. 59. b. Mo. 813.*

Tho' he laughs upon Hearing it. *9 Co. 59. Mo. 813.*

Tho' he takes a Copy, or reads it by Command of his Father, or Master. *R. Mo. 813.*

So, if a Man delivers by Mistake a Paper out of his Study, it is not a Publication, tho' it be a Libel. *R. 5 Mod. 167.*

(C) Libeller.

(C. 1.) Who is not.

BUT a Man is not punishable for a Libel, if he does not contrive it, nor procure the Composition or Contrivance of it. *R. 9 Co. 59. b, Lamb.*

Or, does not publish it, knowing that it was a Libel. *9 Co. 59. b.*

[If Defendant has owned himself Author of a Book, *Errors of the Press and some small Variations excepted*, it is sufficient to intitle the Prosecutor to have the Book read, and the Defendant shall be put to shew that the Variations were material. *Rex v. Hall, H. 7 G. Str. 416.*]

So Words to the Diminution of a Magistrate, do not make a Libel, if they do not impeach him in his Office: * And therefore, a Man is not indictable, if he says, *Justices of Peace have Nothing to do with the Excise.* *1 Vent. 10. Vide* [Nor, unless in Writing. *Vide Sal. 417, 418.*]
Ante, (A. 2.)

Or, *The Justices of Peace don't understand the Laws of Excise, and many Parliament-Men don't understand them, if they read them*; tho' they are Causes for binding to good Behaviour. *R. 1 Vent. 16.*

So it will not be a Libel, if a Man charges another with a Crime in a Course of Justice: As, by an Appeal for Murder, Robbery, Rape, or other Felony. *2 Inst. 228.* (C. 2.)
If done in a Course of Justice.

Or, by Indictment for such Crime.

Tho' the Charge be false. *2 Inst. 228.*

So, if he writes a Falsity of another for the Instruction of his Counsel, Attorney, &c. in a Course of Justice. *Ibid.*

Or speaks it in Evidence to a Jury. *Ibid.*

Or uses such Words in any Manner, in a Course of Justice. *Ibid.*

Or says upon Examination, that his Bill, &c. is true. *R. 2 And. 28. Mo. 705, 6.*

But if a Man charge another with Felony or other Crime, in the *Chancery, Star-Chamber, &c.* or other Court that has not Jurisdiction of such Offence, it will be a Libel; for it is not in the Course of Justice. *2 Inst. 228. 2 And. 28. Mo. 143.*

Tho' the Bill was exhibited by a Solicitor in his Name, and in his Absence, if he does not disclaim it, when he has Notice of it. *Semb. Popb. 152, 3.*

So, if he charges with a Crime, of which the Court has Conusance, if it be *ex merâ Malitiâ*, without Colour, and not with Intent to proceed against the Defendant. *R. 12 Co. 103.* But it was agreed, that this was not punishable by Law, but only by Fine and Costs in the *Star-Chamber.* *Mo. 820.*

So, if a Paper against a Petition to Parliament be published containing foreign Aspersions and Slanders. *R. Hard. 470.*

(C. 3.) How punished.

By the Common Law, every Libeller shall be indicted, and if thereupon convicted shall be fined and imprisoned according to the Nature of the Offence. (C. 3.)
By the Common Law.

5 Co. 125. 3 Inst. 174. Cro. Car. 175, 504.

Or may be put in the Pillory. *5 Co. 125. b.*

So he might have been punished by Bill, or *Ore tenus* upon Confession in the *Star-Chamber.* *5 Co. 125.*

[A Libeller may be fined, and bound to his good Behaviour, on his Confession in Court. *Rex v. Middleton, 9 G. Fort. 201.*]

So now an Information may be exhibited against a Libeller.

[If the Libel be true, the Court will not grant an Information. *Rex v. Bickerton, H. 8 G. Str. 498.*]

And

And in such Information, the Prosecutor may give in Latin the Sense and Import of the Libel; and in such Case it is sufficient, if the Substance of the Libel be recited, tho' not the Words. *Sal. 661.*

Or the Prosecutor may recite the Words of the Libel; as, if he say, *quæ sequitur in his Anglicanis Verbis*: And then a Variance in any Word defeats the Prosecution. *R. Sal. 661.*

Or, if he say, *Cujus Tenor sequitur*. *Sal. 661, 417.*

Or, *quæ continet inter alia juxta Tenorem sequentem*; for he need not set forth the whole Paper, and if that, which is omitted, vary the Sense of the other Part, the Defendant shall be found *Not Guilty*. *R. Sal. 417.*

Or, *juxta Tenorem & ad Effectum sequentem*, tho' *ad Effectum* by itself would have been bad. *Ibid.*

But the Charge must be certain: And therefore, *scripsit aut scribi causavit*, is bad. *2 Mod. Ca. 329.*

So, if a Libel be to the Defamation of another, an Action upon the Case lies, as well as an Indictment. *R. Skin. 123, 4.*

[In an Action for a Libel, it must be laid to be of and concerning the Plaintiff. *Lowfield v. Bancroft, P. 5 G. 2. Str. 934.*]

(C. 4.)
By Statute.
Who are
within the St.
W. 1. and
2 R. 2. 5.
Vide Scandalum Magnatum
in *Action upon*
the Case for
Defamation.
(B. 1, &c.)

So, by the *St. W. 1. 34.* None shall be so hardy as to tell or publish false News, whereby Discord or Slander may arise between the King and his People, or the Great Men of his Realm: And he who does so, shall be detained in Prison till he find in Court him from whom the Speech moved.

So, by the *St. 2. R. 2. 5.* None shall be so hardy to devise, speak, or tell any false News, Lies, &c. of Prelates, Lords, &c. whereby Discord or Slander may arise within the Realm, (*viz.* between Lords, or the Lords and Commons) on the Pain inflicted by the said *St. W. 1. 34.* And this is confirmed by the *St. 12 R. 2. 11.*

And by the Preamble of the *St. 2 R. 2. 5.* It is recited, That Devisors were of false News and horrible Lies of Prelates, Dukes, Earls, Barons and other Nobles, and of the Chancellor, Treasurer, Privy Seal, Steward, Justices of one Bench or other, and of other Great Officers, &c.

Before those Statutes, false Rumours produced great Mischiefs to the Peace of the Kingdom. *2 Inst. 226.*

And for Prevention of them, Remedy was provided by those Statutes, where any false News or Rumours are invented or contrived. *2 Inst. 227.*

So, against them who do not contrive, but disperse and relate such false News. *Ibid.*

Tho' they name their Author for the Relation. *R. 12 Co. 134.*

Within the *St. W. 1. 34.* are all Contrivers or Dispersers of false Rumours of the King himself. *2 Inst. 228.*

And by the *St. 2 R. 2.* (tho' that does not extend to the King) as well as by the *St. W. 1.* Contrivers or Relators of false News concerning the Great Men or Officers of the Realm shall be punished. *2 Inst. 227. 12 Co. 133.*

So any Rumours are within the Statute, whereby Discord and Slander may arise between the King and his Nobles, or between the King and his People. *2 Inst. 227. 12 Co. 133.*

(C. 5.)
What Remedy is provided.

For false News of any great Man, named by the *St. 2 R. 2. 5.* An Action for *Scandalum Magnatum* lies. *Vide Action upon the Case for Defamation, (B. 1, &c.)*

So the Party might have proceeded against him, who spoke scandalous Words against any such Great Man by Bill in the *Star-Chamber*, whereupon he should be fined and imprisoned, or have Corporal Punishment. *R. 12 Co. 134.*

Or the Attorney-General might have proceeded in the *Star-Chamber* by Bill, or *Ore tenus* upon Confession. *R. 12 Co. 134.*

So the Commission to Justices of *Oyer and Terminer, &c.* gives Authority to inquire *de illicitis Verborum Propagationibus*. *12 Co. 134. 2 Inst. 228.*

Or, there may be a special Commission for it. *2 Inst. 229.*

And

And therefore, a Contriver and Reporter of false News, &c. may be punished by Indictment.

A Contriver or Inventer, being convicted upon an Indictment, has no express Punishment against him by Statute, but shall be left to the Punishment due by the Common Law, viz. Fine and Imprisonment. 2 Inst. 228.

So a Relator shall be punished by Fine and Imprisonment; for the Statute says, that he shall be taken and detained, which implies that he shall be also fined. Ibid.

And this by the express Words of the St. 12 R. 2. 11. which enacts, That if any imprisoned, &c. cannot find him, from whom the Speech moved, he shall be punished by the Advice of the Council.

So, by the St. W. 1. and 2 R. 2. 5. A Man convicted for spreading false Rumours, &c. may be imprisoned till he finds his Author. 2 Inst. 229.

But where the Indictment is general, for speaking of scandalous Words, without Reference to any Author, the Judgment shall not be, that he be imprisoned till he produce his Author, tho' he heard the Words before his Speaking them. R. 12 Co. 134.

L I B E R A T E

Vide Statute-Staple, (D. 6.)

L I B E R T A T E P R O B A N D A.

Vide Villenage, (C. 3.)

L I B E R T I E S.

(A) The several Species of them.

HOW Liberties may be claimed, *Vide Franchises, (A. 1, 2.)*

All Liberties and Franchises are derived from the King. *Vide Prærogative, (D. 30, &c.)*

As to the Counties Palatine, Cinque-ports, and Corporations, *Vide Franchises, (D. 1, &c.—E. 1, &c.—F. 1, &c.)*

As to Liberty to have Conusance, or to hold Pleas, *Vide Courts, (P. 1, &c.)*

To have Courts, *Vide County, (C. 1, &c.)—Courts.—Hundred, (B.)—Leet.*

As to Liberty to make Justices, or Officers, *Vide Justices.—Justices of Peace.—Officer.—Prærogative, (D. 29, 37.)*

As to the Liberty of a Chase, Forest, Park, Warren, &c. *Vide Chase.*

(B) How granted.

IF the King grants a Liberty to another, he may make the Grant by Words expressly denoting what Liberty is intended.

Or the King may grant by General Words, which relate and have Reference to some Specialty: As, if the King grants to a Town, That they shall have Justices, who shall have such Authority and Power as any other Justices in the County have, it will be good; for the Specialty, to which the General Words refer, is well known. 20 H. 7. 6. b. 7. a.

If the King incorporate a Town and grant, That it shall have such Liberties as London, it will be good; for it sufficiently appears what Liberties London has. Per 2 J. 20 H. 7. 6. b. 7. b.

LIBERTIES.

(C) How lost.

(C. 1.) By Nonuser.

(C. 1.)
When it shall
be a Forfeiture.

HOW they may be destroyed by coming back to the King, *Vide Franchises*, (G. 1, &c.)

When forfeited by Breach of a Condition in Law annexed, *Vide Condition*, (S. 1, 2.)—*Franchises*, (G. 3.)

Liberties, in which the Subject has an Interest for Common Justice, or the Common Profit, may be forfeited by Nonuser: As, a Liberty of Courts may be lost by Nonuser.

So a Liberty of a Fair, or Market. *Manw. 81.*

So a Forfeiture of any Franchise or Liberty is a Forfeiture of every other Incident or subordinate Claim by the same Grant. *Pal. 82.*

As, if a Man lose a Market, or Fair, he shall lose also the Court of Piepowders. *Ibid.*

But where the Franchises in the same Grant are several, the Forfeiture of one does not lose the other. *Ibid.*

(C. 2.)
When not.

But a Liberty, for the Sole Profit or Pleasure of the Owner, shall not be lost or forfeited by Nonuser: As, if a Man can shew a Title to a Park, Warren, &c. by Grant or Prescription, he shall not lose it by Nonuser. *Manw. 81.*

LICENCE.

Vide Alienation, (A. 1, 2.)—*Capacity*, (B. 3.)—*Chafe*, (H. 3.)—*Fine*, (E. 8.)—*Justices of Peace*, (B. 26, 100.)—*Pleader*, (D. 1, &c.)—*Trespass*, (D.)

LIFE.

Estate for Life.

Vide Copyhold, (C. 10.)—*Devise*, (N. 7.)—*Estates*, (E. 1, &c.)—*Officer*, (B. 9.)—*Waste*, (F. 2.)

LIGANCE.

Vide Allegiance.

LIMITATION.

Limitation of Actions.

Vide Action upon the Case upon Assumpsit, (D.—H. 6, 7.)—*Chancery*, (I. 1.)—*4 W. 17.*—*Prærogative*, (D. 86.)—*Temps*, (G. 1, &c.)

Limitation of the Crown.

Vide Parliament, (H. 18, 19.)

Limitation of Estates and Uses.

Vide Condition, (T.)—*Chancery*, (4 W. 19, &c.)—*Uses*, (K. 1, &c.)

L I S P E N D E N S.

Vide Abatement, (H. 41, &c.)—*Chancery*, (I. 1.—4 C. 3, 4.)—*Maintenance*, (A. 5.)

L I V E R Y - M A N.

Vide Franchises, (F. 26.)

L I V E R Y O F S E I S I N.

Vide Feoffment, (B. 1, &c.)

L O N D O N.

(A) *It's Antiquity, and Extent.*

TACITUS says of *London*, *Quod Tempore Neronis fuit Copia Negotiatorum, & Commeatu maxime celebre.* 4 *Inst.* 247.

The City of *London* being destroyed by the *Danes* A. 839. was restored and encompassed with Walls by King *Alfred* A. 886, which having been often repaired were rebuilt A. 1477 from the *Tower* to *Aldgate*, and so to *Bishopsgate*, and so to *Cripplegate*, then to *Aldersgate*, *Newgate*, *Ludgate*, and to *Fleet-ditch*, and so to the *Thames*, 643 Perches, viz. above two Miles in Circuit. 1 *Stow.* 9, 11, 12.

The antient Wall passed thro' the *Tower*, for which Reason All within the *Tower* that lies upon the West Part of the Wall is within the City of *London*, and All upon the East Part lies in the County of *Middlesex*. 3 *Inst.* 136.

Before the Time of *H. 3.* the City was divided into 24 Wards, whereof *Portoken* lies extra *Murum*, *Bishopsgate*, *Cripplegate*, *Aldersgate*, and *Farringdon*, in Part extra, in Part intra *Murum*. 1 *Stow.* 347.

By Parliament, 17 R. 2. *Farringdon extra* was severed from *Farringdon intra*, and made a distinct Ward. 1 *Stow.* 347.

By Charter 1 *Ed. 3.* made and approved in Parliament, the King granted to the Citizens and their Successors the Vill of *Southwark cum pertinentiis, solvendo* the usual Farm. 2 *Stow* 3. (*Vide Priv. Lond.* 14.)

By Patent 4 *Ed. 6.* the King granted to them his Manor and Borough of *Southwark cum Pertinentiis in Com. Surry*, the Messuages and Lands near the Borough of *Southwark* purchased by *H. 8.* of *Ch. D. of Suffolk*, except *Southwark Place* and *Park*, the Prisons of the King's Bench and *Marshalsea*; *Et quod Inhabitantes de Southwark sint sub Gubernatione, &c.* of the City as Citizens and Inhabitants of *London*. 2 *Stow.* 4, 6. (*Vide Priv. Lond.* 20.)

After that Grant, by an Order of the Court of Mayor and Aldermen, confirmed by the Court of Common Council, the last Day of *July* 4 *Ed. 6.* *Southwark* was constituted the 26th Ward, by the Name of *Bridge Ward without*. 2 *Stow.* 6.

By Agreement with the Earl of *Cornwal* confirmed by Charter 26 *Feb.* 31 *H. 3.* *Queenhithe* with all Liberties is granted to the Mayor, and Commonalty of *London* and their Successors, rendring 50 *l.* per Annum. (*Vide* 1 *Stow.* 699. & *Priv. Lond.* 9.)

By Charter 18th *October* 14 *Car.* The King grants to the Mayor, Commonalty, and Citizens of *London*, the *Moorfields Outer* and *Inner*, and *West Smithfield*. (*Vide Priv. Lond.* 27.)

(B)

(B) Extent of it's Jurisdiction.

PORTSOKEN Ward (which extends from *Aldgate* to the Bars near *Whitechapple*, and from the House of *Lord Bouchier* near *Bishopsgate* to that Place in the *Thames*, to which an Horseman, riding into it at Low-water, can throw his Spear) imports, the Franchise *ad Portum*. 1 *Stow*. 348.

This Ward was granted *Temp. Edgar* to thirteen Knights to have the Land, with Liberty of a Guild *in perpetuum*, and was by them granted to the Canons of the *Holy Trinity*, *Temp. H. 1. A. 1115*, within the Walls of the City. 1 *Stow*. 348.

The Prior of that House was from thence admitted as an Alderman of the City to have the Government of that Ward and Soke; and since the Dissolution, the Alderman is elected, as other Aldermen, by the Citizens. 1 *Stow*. 349.

* [Qu. as to
St. Katherine,
East
Smithfield,
and Part of
Tower-hill.]

And therefore, the East Part of the *Tower*, *St. Katherine's*, *East Smithfield*, *Tower-hill*, the *Minories*, Storehouses, and *St. Botolph's* Parish, which lie in that Ward, are within the Liberty of the City towards the East. (*Vide* 1 *Stow*. 349, &c.)

So, in *Bishopsgate* Ward, from the Gate to the Bars *juxta St. Mary Spittle* and half *Houndsditch*, in this Ward, is Part of the Suburbs and within the Liberty of the City. (*Vide* 1 *Stow*. 421.)

In *Cripplegate* Ward, *Forestreet* from the North of *St. Giles's* Church through *Moor-Lane* to *Postern-Lane* End near *Moorgate*. with all Houses, Gardens, and Alleys to *Moorfields* near *Finsbury* Court, the Alleys and Buildings about *Moor-Lane*, Part of *Grub-Street*, *Whitecross-Street* to the End of *Beech-Lane*, *Redcross-Street* up to the Posts in *Golden-Lane*, and Part of *Barbican* are extra *Murum*. (*Vide* 1 *Stow*. 582.)

In *Aldersgate* Ward, extra *Murum* are *Aldersgate-Street* as far as *Barbican* and *Long-Lane*, and *Goswell-Street*, to the Bars. (*Vide* 1 *Stow*. 601.)

Farringdon Ward extra *Newgate* and *Ludgate* extends towards the West to the Bars in *St. John Street*, the Bars in *Holborn*, and *Temple Bar*. (*Vide* 1 *Stow*. 711.)

By Charter 4 *Ed. 6.* the Mayor, Commonalty, and Citizens of *London* shall have like Jurisdiction, &c. in *Southwark*, &c. as in *London*. (*Vide* 2 *Stow* 4, 6. and *Priv. Lond.* 22.) *Vide Ante*, (A.)

By Charter 20 *September 6 Jac.* The Jurisdiction of the Mayor, Commonalty, and Citizens of *London* shall extend through the several Circuits, &c. of *Duke's* Place, *Great St. Bartholemew*, and *Little St. Bartholemew*, *Blackfryars*, *Whitefryars*, and *Cold Harbour*. (*Vide Priv. Lond.* 24.)

So, by Grants from Antient Kings the Mayor, Commonalty, and Citizens of *London* have the Property of the *Thames*, *tam Soli quam Aquæ*. (*Vide* 1 *Stow*. 35.)

By Charter 8 *R. 1.* and 1 *John*, all Wears, &c. in the *Thames* and *Medway* shall be amoved. (*Vide* 1 *Stow*. 36. and *Priv. Lond.* 5, 6.)

And thereupon the Mayor and Commonalty of *London* Time out of Mind, have had the Conservation and Regulation of the *Thames*, and the Lands thereby overflowed, from *Staines* Bridge in the County of *Middlesex*, to the Waters of *Yendall* and *Medway*, and the Punishment of unlawful Engines, &c. And this confirmed by Charter 3 *Jac.* &c. 1 *Stow*. 34. 4 *Inst.* 250. 1 *Sid.* 148.

[*St.* 14 *G. 3. c. 91.* and 17 *G. 3. c. 18.* grant Powers to the Lord Mayor, &c. to improve the Navigation of the *Thames* Westward, and to purchase Tolls, and to lay a Toll.]

Vide Courts (O. 1, &c.)

(C) Mayor.

BY Charters 16 *John* and 11 *H. 3.* The Barons of *London* may yearly choose a Mayor fit for the Government of the City, so as he be presented to us, or, if absent, to our Justices, and sworn to be faithful to us. *Vide* 2 *Stow*. 186, &c. 450, &c. and *Priv. Lond.* 6. 7.)

By Charter 37 H. 3. to the King, or, if absent, to the Barons of the *Exchequer* at *Westminster*. And by Charter 26 Ed. 1. if the King and Barons be absent, to the Governor of the *Tower*. (*Vide* 2 *Stow*. 186, &c. 450, &c. and *Priv. Lond.* 9, 11.)

Before and since the Conquest, to the Time of R. 1. *London* was governed by a Port-reeve, and 1 R. 1. by two Bailiffs, and afterwards by a Mayor appointed by the King, but 10 *John* the King granted *quod eligant* a Mayor *de seipsis* annually. 4 *Inst.* 253. (*Vide* 2 *Stow* 450.)

By Charter 1 Ed. 3. The Mayor of *London* shall be named in every Commission for Gaol-delivery of *Newgate*: And shall do the Office of Escheator within the Liberties of the City, so as he take Oath to exercise the Office, and to answer to the King as he ought. (*Vide Priv. Lond.* 12, 13.)

By Charter 2 Ed. 4. The Mayor, Recorder, and Aldermen that have been Mayors, shall be Conservators of the Peace within the City: And they or four of them, *Quorum* the Mayor to be one, shall be Justices of *Oyer* and *Terminer* there. (*Vide Priv. Lond.* 16.)

By Charter 14 Car. They, or the Aldermen, not Mayors, shall be Justices, and four of them, *Quorum* the Mayor, or Recorder to be one, may hold a Sessions. *Vide Priv. Lond.* 26.) *Vide Post*, (K. 6.)

[The Jurisdiction by 1 J. 1. c. 22. concerning Leather-cutters, is not in the Mayor personally, but as the Head of the Court of Sessions. *Rex v. Williams*, T. 30 & 31 G. 2. 1 B. M. 385.]

(D) Aldermen.

THE Aldermen of *London* were annually chosen, till by Charter 28 Ed. 3. it was granted, that they should not be removed without Cause; and by the St. 17 R. 2. 11, it was enacted, that they should not be * chosen annually, but remain till removed for Cause. 4 *Inst.* 253.

But the King by Charter may exempt the Officers of the Mint, that they shall not be an Alderman, or other Officer there, and then they cannot be fined for Refusal. R. 1 *Sid.* 288.

* [*Vide the*
St. 11 Geo. 18.
as to their
Election.]

(E) Recorder.

IF the Custom of *London* be denied, it shall be certified by the Mayor and Aldermen by the Mouth of the Recorder, and a Writ goes to the Mayor to certify, except where the City is concerned in Interest. 2 *Inst.* 126. *Vide Certificate*, (B.)

[On a *Certiorari* to the Mayor and Aldermen to certify a Custom, the Recorder (in his purple Cloth-robe faced with black Velvet) certifies *ore tenus*, and then, on Motion, delivers in the *Certiorari*, with a written Copy of the Return annex: the Writ is filed and the Return recorded. *Plummer v. Bentham*, H. 30 G. 2. 1 B. M. 248.]

[If it is not *surmised* in the Pleadings, that a Custom ought to be tried thus, it shall be tried by the County. *Ibid.*]

(F) Common Council.

A Court is held at *Guildhall* before the Mayor, Aldermen, and Common Council, * whenever the Mayor appoints. (*Vide Priv. Lond.* 350.)

The Mayor and Aldermen sit by themselves, and the others, who represent the Commons of the City, by themselves. 4 *Inst.* 249.

The Court of Common Council makes all By-Laws, which bind within the City and the Liberties. *Ibid.*

So they annually choose a Committee of six Aldermen and twelve Commoners for leasing the Lands of the City; four Aldermen and eight Commoners for the Management of the Lands given by Sir *Thomas Gresham*; a Governor, Deputy Governor.

* [*Vide the*
St. 11 Geo.
as to their
Election, &c.]

Governor, and Assistants for the Management of the City Lands at *Ulster* in *Ireland*. (*Vide Priv. Lond.* 350, 351.)

So they elect to the Offices of Common Serjeant, Town Clerk, and Common Cryer. (*Vide Priv. Lond.* 352.)

No Alien shall be admitted to the Freedom of the City, without their Assent. (*Vide Priv. Lond.* 352.)

(G) Sheriffs.

BY Charter *H.* 1. The Citizens of *London* shall hold *Middlesex* in Farm at 300 *l.* per Annum, so as they place as Sheriff, whom they will, of themselves. (*Vide 2 Stow* 450, &c. and *Priv. Lond.* 3.)

By Charter *i John*, The King grants and confirms to them the Sheriffwick of *London* and *Middlesex*, with all Customs belonging within the City and without, by Land and by Water, paying 300 *l.* per Annum at the *Easter* and *Michaelmas* Exchequer. (*Vide 2 Stow* 450, &c. and *Priv. Lond.* 5.)

But by Charter *ii H.* 3. *Viccomites respondeant ad Scaccarium de hiis quæ ad dictum Viccomitatum pertinent.* 4 *Inst.* 252.

(H) London is a County, and a Corporation by Prescription.

LONDON is a County of itself. 4 *Inst.* 248.

So *London* is a Corporation by Prescription, known by several Names. 2 *Inst.* 330. *Quo W. sparsim.*

(I) Chamberlain.

^{o [By the Li-very.]} **T**HE Chamberlain of *London* is an Officer chosen annually *. (*Vide Priv. Lond.* 302.)

And this Officer is a Corporation Sole by Custom, who may take a Recognizance, Obligation, &c. for Money when it belongs to an Orphan, or to a Matter under his Care; which goes in Succession, and not to his Executor or Administrator. *R.* 4 *Co.* 65. *Vide Guardian*, (G. 1, &c.)—*Biens*, (C.)

And the Successor by Custom may sue the Obligation, or upon such a Recognizance direct a Precept, in the Nature of an *Elegit*, to a Serjeant at Mace of his Court; who shall thereupon do Execution according to the *St. W.* 2. 18. *R.* 4 *Co.* 65.

By Charter of 28 *Ed.* 3. The Serjeants at Mace in the City may bear them of Gold or Silver, or silvered, with our Arms, in the City or Suburbs in *Middlesex* and other Places belonging to the Liberties of the City. (*Vide Priv. Lond.* 14.) 4 *Inst.* 252.

(K) Offices granted.

(K. 1.) Office of Package.

BY Charter 18 *Ed.* 4. confirmed by Parliament 3 *H.* 8. the King granted; for a Debt of 7000 *l.* remitted to the King by the City, to the Mayor and Commonalty and their Successors, the Offices of Packing all Cloaths, Skins, and other Merchandizes within the Liberties of the City, as well Denizens as Aliens, and the Oversight of opening all Merchandizes customable, brought to the Port of Safety by Land, or Water. (*Vide Priv. Lond.* 19.)

(K. 2.) Portage.

So, by the same Charter, *Ed.* 4. granted to them the Carriage and Portage of all Wools and other Merchandizes, carried in *London* from the *Thames* to any Strangers

Strangers Houses, *vel retro*, and of other Merchandizes to be carried, being in any House for a Time. (*Vide Priv. Lond. 19.*)

(K. 3.) Garbling.

So, by the same Charter, *Ed. 4.* granted to them the Garbling of all Spices, and other Merchandizes that ought to be garbled. (*Vide Priv. Lond. 19.*)

(K. 4.) Gauger.

So, by the same Charter, and by Charter 20 *H. 7.* was granted to them the Office of Gauger within the City; And the Ordering and Correction of the same, with all Fees, &c. without Account. (*Vide Priv. Lond. 19.*)

(K. 5.) Wine-Drawer.

So, by the Charter 18 *Ed. 4.* the King granted to them the Office of Wine-Drawers, to provide for carrying all Wines brought to the Port of the City, and laid on Land, or elsewhere to be carried. (*Vide Priv. Lond. 19.*)

(K. 6.) Justices of Peace, Coroner, &c.

By the same Charter, *Ed. 4.* granted to them, that they make Coroner of the City whom they please. (*Vide Priv. Lond. 19.*)

So, by Charter 2 *Ed. 4.* the Mayor, Recorder, and Aldermen that have been Mayors, shall be Conservators of the Peace of the City, as well by Land as by Water. So, by Charters 6 *Jac. & 14 Car. 1.* they and the Aldermen who have not been Mayors, &c. *Vide Ante, (C.)*

And they or four of them (*Qu.* one is Mayor) shall be Justices of Oyer and Terminer within the City and Liberties, to determine all Things belonging to Justices of Peace. (*Vide Priv. Lond. 16.*)

So, by Charters 6 *Jac. & 14 Car.* they and the Aldermen, not Mayors, whereof four (of whom the Mayor or Recorder to be one) may hold Sessions. And the Sheriffs, &c. shall be attendant, &c. (*Vide Priv. Lond. 24, 26.*)

(K. 7.) Office of the Great Beam, Weights, and Tronage.

So, by Charter 22 *H. 8.* the King granted the Office of Keeper of the Great Beam and Common Balance or Weight within the City of London, for weighing all Merchandizes of *Averdupois*, and also all Weights, to the Mayor, Commonalty, and Citizens of London and their Successors: And they shall have Tronage, *viz.* the Weighing Wax, Lead, Pepper, &c. and like Wares for ever. (*Vide Priv. Lond. 20.*)

And the Charters 12 *Ed. 2.* and 1 *H. 4.* to the same Effect are confirmed, and they seem to have had it Time out of Mind, &c.

By Charter of *H. 3.* No Stranger shall buy Goods till weighed at the King's Beam, on Pain of Forfeiture. (*Vide Priv. Lond. 10.*)

And therefore, a By-Law, that a Foreigner who sells Goods usually sold by Weight shall pay 13s. 4d. for every five Hundred Weight, if he does not bring them to the City-Beam to be weighed, will be good. *R. 1 Lev. 15. 1 Keb. 32, 35, 39.*

So, by Charter 1 *H. 4.* The Citizens shall have the Office of gathering the Tolls and Customs in *Cheap, Billingsgate, and Smithfield*; And Tronage, *viz.* the Weighing of Lead, Wax, Pepper, &c. and like Wares within the City for ever. (*Vide Priv. Lond. 15.*)

By Charter 3 *Ed. 4.* The King granted to the Mayor, Commonalty, and Citizens the Tronage, Weighing, Measuring, and Laying up of all Wool, which shall be at *Leaden-hall*, and no other Place within three Miles. (*Vide Priv. Lond. 18.*)

(K. 8.)

(K. 8.) Custody of the Gates, &c.

So, by Charter 1 H. 4. The Citizens of London shall have the Custody of Newgate, Ludgate, and all other Gates and Posterns in the City. (*Vide Priv. Lond. 15.*)

(L) Exemptions granted.

(L. 1.) To be free of Toll, &c.

BY Charter H. 1. All the Men of London, and all their Goods shall be free from Scot and Lot, Danegilt, and Murder. And from all Toll, Passage, and Lestage, and all other Customs thro' all England and the Ports of the Sea. So, by Charters 11 H. 3. and 50 H. 3. *Vide 4 Inst. 252.*

So, by Charter H. 2. and 1 John; And also, that they shall be free from Bridg-toll, Childwite, Jerefgive, and Scotale. (*Vide Priv. Lond. 4.*)

So, by Charter 26 Ed. 1. from Pontage, Pannage, and Murage thro' the Kingdom, and all our Dominions. (*Vide Priv. Lond. 11.*)

So, by Charters H. 1. H. 2. and 1 John, None of the Citizens of London shall wage Battle. *4 Inst. 252.*

(L. 2.) Excused from Juries, &c.

So, by Charter 2 Ed. 4. Aldermen, while they continue so, and those that have been so and have also been Mayors, shall not be put in Assizes, Juries, or Attaints, Recognizances, or Inquisitions out of the City. (*Vide Priv. Lond. 16.*)

[A Jury of Citizens may waive their Privilege, and consent to be sworn on a Trial at Bar in *Middlesex. Lockyer v. East-India Company, M. 2 G. 3. 2 Wils. 136.*]

(L. 3.) And from Suits out of the City.

So, by Charter 1 H. 1. the Citizens of London shall not plead out of the Walls of the City in any Plea. So, by Charters H. 2. and 5 R. 1. except Pleas of Foreign Tenures, the King's Moneyers, and Ministers. So, by Charters 1 John and 11 H. 3. and 1 Ed. 3. (*Vide Priv. Lond. 3, 4, 5, 8, 14.*)

So, by Charter 1 Ed. 3. No Freeman shall be impleaded at the Exchequer, or elsewhere, by Bill, unless it concern Us or our Heirs. (*Vide Priv. Lond. 14.*)

(L. 4.) Excused from Offices.

So, by Charter 1 Ed. 3. The Citizens shall not be compelled to go or send to War out of the City. (*Vide Priv. Lond. 13.*)

Nor, by Charter 2 Ed. 4. shall Aldermen be made Collectors, Assessors, &c. of Tenths, Fifteenths, Taxes, Subsidies, or other Impositions granted to Us or our Successors: And if elected shall forfeit Nothing by Refusal, &c. (*Vide Priv. Lond. 16.*)

(M) The Privileges and Customs of London are confirmed by Parliament.

BY the St. M. Ch. 9. H. 3. 9. *Civitas London habeat omnes Libertates suas antiquas & Consuetudines suas.*

By the St. 7 R. 2. Rot. Par. nu. 37. (not printed) the Citizens of London shall enjoy all their Liberties whatsoever, *licet usi non fuerunt vel abusi*, and notwithstanding any Statute to the contrary. So that they may claim Liberties by Prescription,

scription, Charter, or Parliament, notwithstanding any Statute made before 7 R.
2. 4 *Inst.* 250, 253.

But this is intended of Franchises, that are by lawful Title, and not forfeited, and Franchises and Customs sufferable by, and not repugnant to Law.
2 *Inst.* 20.

And therefore, a Custom to imprison for abusive Words to a Mayor or Alderman out of Court, is not good. *R. Cro. El.* 689.

And tho' the Customs and Privileges of *London* are confirmed by Parliament, the King by Charter may exempt a Person from being an Officer there: As, to the Officers of the Mint, that none shall be Mayor, Escheator, Sheriff, or other Officer there. *R. 1 Sid.* 288.

But a Custom, that the Watchmen at the Custom-house shall be exempt from the Office of Constable, is not good. *1 Sid.* 272.

[The Court cannot judicially take notice of a Custom of *London*, there must be Affidavit of it. *Thyer v. Eastwick*, *H. 7 G. 3.* *Argil v. Hunt*, *T. 5 G. 1.* *Driver v. Colgate*, *H. 12 G. 2.* *Hartopp v. Hoare*, *P. 16. G. 2.* 4 *B. M.* 2032.]

(N) Customs of London.

(N. 1.) In Actions and Suits.

BY the Custom of *London*, an Action of Covenant lies, without a Specialty. *Vide Courts*,
(*Vide 22 Ed. 4. 2. a.* and *Priv. Lond. 149.*) (O. 1, &c.)

So Debt lies in *London* upon a *Concessit solvere*. (*Vide Priv. Lond. 146.*) and
1 *H. 7. 22. a.*)

And lies against an Executor upon a Simple Contract. (*1 Ed. 4. 6. b.* 8 *Co.*
126. *a.*)

And also against an Administrator; for he was suable as Executor before the
St. 31 Ed. 3. 11. *R. Cro. El.* 409. 5 *Co.* 82. *b.*

So Debt lies against Pledges by *Parol*. (43 *Ed. 3. 11. b.* 1 *Ed. 4. 6. a.*)

So, by the Custom of *London*, after a Plaint entred in the Compter, a Serjeant may arrest, without Process. (9 *Co.* 68. *Cro. Car.* 196.)

After a Debt levied before the Sheriff in his Court, the Sheriff may direct the Serjeant *ore tenus* to summon or attach the Defendant without Warrant, and upon *Nichil* returned to arrest, *ad Habendum Corpus* at the next Court.

So, by Custom, Debt lies by an Obligor who pays the whole Debt, against the other Obligor for his Proportion. (*Vide Priv. Lond. 148.* and *Mo.* 136.)

So, for Lands in *London*, an Action lies in *London*, and not elsewhere. (4 *Inst.*
247.)

And it cannot be removed by *Tolt*, or *Pone*. 2 *Inst.* 324.

But upon a *Foreign Voucher* by the *St. Glo.* 12. there shall be a Summons *ad Warrantizandum*. 2 *Inst.* 324. *Vide Courts*, (O. 2.)

So, upon a Plaint against *A.* in the Sheriff's or Mayor's Court, upon a Suggestion, that *B.* is indebted to *A.* and Process against *B.*; if he does not deny the Debt, it shall be attached in his Hands for Satisfaction of the Debt by *A.*
22 *Ed. 4. 30.* *Vide Attachment*, (A.)

And this Recovery by Foreign Attachment may be pleaded by *B.* in an Action against him for the Debt, or given in Evidence upon *Non Assumpsit*, *Vide Attachment*, (H.—I.)

So, if a Judgment be against *A.* in the Sheriff's Court upon which *A.* was in Execution, and afterwards *A.* is removed by *Habeas Corpus*, upon which this Judgment is returned, and he is committed to the Marshal of *B. R.* charged with a Judgment there and in *London*; *A.* pays the Judgment in *B. R.* and the Judgment in *London* is reversed in the *Hustings*; *A.* shall be remitted to *London* to be discharged there, for *B. R.* has no Knowledge of the Judgment in *London*, except by the Return upon the *Habeas Corpus*, and cannot remove the Record from *London* by *Certiorari*. *R. Cro. Car.* 128.

(N. 2.) In Regard to Apprentices.

By the Custom of *London*, every one above 14, and under 21, may bind himself Apprentice to a Freeman of *London*, by Indenture for seven Years, and shall be compelled to serve. (*Pal.* 361. 2 *Rol.* 305.)

Tho' bound at *York*, or elsewhere out of the City. (*Mo.* 136. *Semb. cont.* 2 *Bul.* 193.)

So the Widow of a Freeman may take for her Apprentice, any Woman for seven Years. (*Vide Priv. Lond.* 307.)

So, a Sempstress, or other, the Wife of a Freeman; but she shall be bound by Indenture to the Husband. *Ibid.*

So the Apprentice may be bound for eight, nine, or ten Years. *Ibid.*

If the Apprentice departs from his Service, or breaks the common Covenants in the Indenture, an Action lies against him, tho' he be an Infant, by the Custom of *London*. (*Vide Priv. Lond.* 108, 109. and *Pal.* 361. 2 *Rol.* 305.)

So, by the Custom of *London*, every Indenture of Apprenticeship ought to be inrolled within a Year, before the Chamberlain. (*Vide Priv. Lond.* 107, 303. *Pal.* 361. 2 *Rol.* 305.)

And the Apprentice ought to be present at the Time of Inrolment. (*Pal.* 361. 2 *Rol.* 305.)

If the Apprentice refuse to appear to be inrolled, the Master may record the Indenture, which will be tantamount. (*Vide Priv. Lond.* 305.)

If the Master neglect the Inrolment within the Year, the Apprentice may be discharged from his Service. (*Vide Priv. Lond.* 107, 303. *Pal.* 361. 2 *Rol.* 305.)

So, by the Custom of *London*, an Apprentice may be assigned to another Master of the same Trade before his Company, and afterwards before the Chamberlain, and shall be bound to serve the second Master for the whole Residue of his Term, and the first Master shall be discharged. (*Vide Priv. Lond.* 108, 304.)

But if the Apprentice be assigned before the Company, and not before the Chamberlain, the second Master is not bound to maintain, nor the Apprentice to serve him. (*Vide Priv. Lond.* 304.)

If there be a Difference between a Master and his Apprentice, it may be determined by the Chamberlain. (*Vide Priv. Lond.* 303, 304.)

Or an Action lies, by the one or the other in the Mayor's Court, for Breach of the Indenture of Apprenticeship. (*Vide Priv. Lond.* 304.)

If the Master misuse the Apprentice, or neglect to instruct him, or to find him Necessaries, the Chamberlain shall send a Summons to the Master to appear before him, and shall relieve the Apprentice, or send him to his Remedy in the Mayor's Court. *Ibid.*

If the Master does not appear upon Summons, the Mayor or Recorder shall send his Warrant for him. *Ibid.*

So, if the Apprentice be disorderly, &c. the Chamberlain shall send the Beadle for him, and afterwards shall send him to *Bridewell*, or otherwise punish him according to the Nature of the Offence. (*Vide Priv. Lond.* 303.)

So, for a reasonable Cause, the Apprentice may be discharged from his Apprenticeship. (*Vide Priv. Lond.* 306.)

And for that Intent, the Apprentice brings his Indenture, or a Copy, to an Attorney of the Mayor's Court, who gives a Note or Warrant to the Master, to inform him of the Intent, and for what Cause, and after four Courts shall make a Summons to the Master to appear and shew Cause to the contrary. *Ibid.*

If the Master appears by Attorney and traverses the Cause, it shall be tried, and according to the Verdict the Apprentice shall be discharged or not, but without Costs. (*Vide Priv. Lond.* 307.)

(N. 3.) As to Disposition of their Lands, &c.

By the Custom of *London* a Citizen may make a Bargain and Sale by *Parol* (N. 3.)
of his Houses and Lands in *London*, notwithstanding the *St. 27 H. 8. 16.* For By Bargain
Cities, &c. are there excepted. (2 *Inst.* 675.) *Vide Bargain and Sale*, (B. 4.) and Sale.

So a Bargain and Sale by Husband and Wife, of the Wife's Lands within
London, binds the Wife, being examined before the Mayor. (*Vide Priv. Lond.*
123, 148. *Hob.* 225. *Gro. El.* 669.) *Vide Baron and Feme*, (G. 4.)

So, by the Custom of *London*, a Freeman may devise his Lands, &c. in *Lon-* (N. 4.)
don. (*Vide Priv. Lond.* 156.) By Devise.

By Charter 1 *Ed. 3.* the King granted to the City of *London* Liberty to de-
vise Lands in *Mortmain*, as was used in Time past; and therefore, they may de-
vise in *Mortmain*, without Licence. 2 *Inst.* 21. *Gro. Car.* 248, 455, 517, 576.

So, by Custom, a Joint-tenant may devise his Purparty, and it will be a Se-
verance. (*Vide Priv. Lond.* 156.)

But a Will of Lands in *London* ought to be proved in the Hustings, and
there intolled. *Ibid.*

So it ought to be proved before the Ordinary, and afterwards in the Hustings.
Gro. Car. 396, 7. *Vide Devise*, (A.)

As to the Custom of *London* in respect to Orphans, and to the Distribution
of a Freeman's Personal Estate. *Vide Guardian*, (G. 1, 2, &c.)

(N. 5.) Erection of Edifices.

By the Custom of *London*, a Man may rebuild his House or other Edifice up-
on the antient Foundation to what Height he pleases, tho' thereby the antient
Windows or Lights of an adjoining House are stoppt, if there be no Agreement
in Writing to the contrary. (*Vide Priv. Lond.* 54.) *Vide Action upon the Case*
for a Nuisance, (C.)

[But of no other Erection or Building so as to stop his Neighbour's Lights.
Plummer v. Bentham, H. 30 G. 2. 1 B. M. 248.]

But he cannot stop antient Lights by an Erection upon a new Soil, or beyond
the antient Foundation. (*Vide Priv. Lond.* 56.) *Vide Action upon the Case for*
a Nuisance, (A.)

So, for the Repair of his House, a Man by Custom in *London* may set his
Poles and Ladders upon the Soil, or House, of another, adjoining. (*Vide Priv.*
Lond. 59.)

But he cannot break the Soil, or House. *Ibid.*

[The *Stat.* 11 G. 1. c. 28. is confined to Party-Walls between Houses, and
doth not extend to Party-Walls between Stables. *Rex. v. Pratt*, P. 9 G. 3.
4 B. M. 2298.]

[*Stat.* 14 G. 3. c. 78. directs the Thickness of Party-Walls, prohibits Bow-
Windows, except for Shops on the Ground-story, to project only five Inches, and
the Coping 13 Inches, in Streets 30 Feet wide; and only 10 Inches, and the Coping
18 Inches, in wider streets: And contains many other Regulations for Build-
ings in the Bills of Mortality; and in *Marybone*, *Paddington*, *Pancras* and
Chelsea.]

(N. 6.) In Regard to Trade.

By Charter *H. 3.* the King granted, that the Citizens of *London* may traffick (N. 6.)
with their Merchandize where they please, as well by Sea as Land. (*Vide Priv.* A Citizen
Lond. 9.) may trade
where he
pleases.
Vide Trade.

By the Custom of *London*, a Freeman, having served in *London*, Apprentice
to a Trade for seven Years, that uses buying and selling, may leave that and use
another Trade of buying and selling. *Gro. Car.* 361, 517.

And

And such Custom shall be good, notwithstanding the *St. 5 El. 4. R. Cro. Car. 347, 516. Vide Prescription, (F. 3.)*

But a Freeman of *London* cannot use a Trade, contrary to the *St. 5 El. 4.* when he never served as an Apprentice for seven Years. *R. 1 Sid. 427.*

[It is a good Custom, that the Portage of Corn, Roots, &c. belongs to the City from *Staines Bridge* to *Yendal in Kent*, and the Bye-Law is good, that none but the Company of free Porters shall carry it, on Penalty of 20 s. *Fazakerley, v. Wiltshire, T. 7 G. Ludlam v. Bradley, P. 13 G. in C. B. Robinson v. Webb, T. 2 G. 2. B. R. Str. 462.*]

[It is a good Custom, that Persons to be admitted to Freedom be obliged to swear on the *New Testament. Rex v. Bosworth, T. 12 G. 2. Str. 1112.*]

[By *Stat. 14 G. 3. c. 87.* Driver of Cattle in the Bills of Mortality misbehaving, convicted before one Justice, forfeits from 20 s. to 5 s. to Prosecutor, or Commitment to hard Labour for a Month, and Whipping.]

(N. 7.)
A Wife may
be a Sole-
Merchant.

So, by the Custom of *London*, a *Fême Covert* may be a Merchant, and trade in a different Trade from her Husband, and buy and sell by herself; in which Case, if the Wife be sued, the Husband shall be joined only for Conformity, and the Wife alone shall be in Execution. *Cro. Car. 68, 69. Vide Baron and Fême, (A. 2.)*

(N. 8.)
A Foreigner
cannot buy or
sell, within
the City, to a
Foreigner.

By the Custom of *London*, no Stranger to the Liberty of the City may buy or sell to any Stranger to the Liberties thereof, (save for the Use of him and his Family, and not to sell again,) any Merchandize or Wares within the Liberties of the City; and if they do, the Goods shall be forfeited to the Mayor and Commonalty. (*Vide Priv. Lond. 104. Cro. El. 352.*)

And this Custom is explained and confirmed by Charter, 20 *H. 7.* and it is recited there, that it was confirmed by Parliament. (*Vide Priv. Lond. 19.*)

Right Patent in London.

Vide Droit, (D.)

Tithes in London.

Vide Dismes, (M. 6, 7.)

L O R D.

Lord of a Leet.

Vide Leet.

Lord of a Manor.

Vide Copyhold.—Dismes, (C. 4.)

Lords Spiritual and Temporal.

Vide Dignity.—Ecclesiastical Persons, (C. 1, 2.)—Parliament.—Scotland, (D. 4.)—Serement, (C.)

Lord's Day.

Vide Temps, (B. 3.)

LUNATICK.

L U N A T I C K

Vide Chancery, (3 Q.)—Ideot.

M A I N P R I Z E

Vide Bail, (B.)

M A I N T E N A N C E.

(A) Maintenance; What shall be.

(A. 1.) By the Common Law.

MAINTENANCE is, when a Man maintains a Suit or Quarrel to the Disturbance or Hindrance of Right. *Co. L. 368. b. 2 Inst. 208, 212.*And it is General, or Special. *Co. L. 369. a.*And therefore, it will be Maintenance in any One, who unlawfully sustains or supports a Plaintiff or Demandant, Tenant or Defendant, in a Cause pending in Suit, by Word, Writing, Countenance or Deed. *2 Inst. 208.*As, if a Master fee Counsel out of his own Money, or speak at the Bar for his Servant. *R. Mo. 6.*So, if a Servant retain an Attorney to prosecute a Suit for his Master, without the Consent of the Master. *D. 2 Rol. 77.*If he who maintains another is to have by Agreement Part of the Land, or Debt, &c. in Suit, it is called *Champerty*. *Co. L. 368. b. 2 Inst. 208, 563.*Or, if he agrees to have a Rent or other Profit out of the Land. *Co. L. 368. b. 2 Inst. 209. 563.*Tho' the Agreement be by *Parol*, or by Deed. *2 Inst. 209.*Tho' the Agreement be with a Disseisor, tho' he has no Right in the Land. *2 Inst. 563.*Champerty is the most odious Species of Maintenance. *2 Inst. 208.*And was an Offence by the Common Law. *Ibid.*And now by the *St. W. 1. 25. Nul Minister le Roy ne maintaine per luy, ne per auter, les Plees en la Court le Roy, des Terres, Tenements, ou des auters Choses, pur aver Part de ceo, ou auter Profit per Covenant fait. Et que le fera, soit punie a le volunt le Roy.*Nor, by the *St. W. 1. 28. Clerke de Justice, ne de Vicont, ne mainteine Parties Quarrels en la Court le Roy.*Nor by the *St. Art. super Chart. 28 Ed. 1. 11. A Minister of the King, nor any other, &c.*And therefore, a Minister of the King or any other, who maintains a Plea, pending in the King's Court upon an Agreement to have Part of the Thing in Suit, will be a Champertor. *2 Inst. 563.*So, by the *St. de Defin. Consp. 33 Ed. 1. St. 2. Champerters be they, who move Pleas or Suits, or cause them to be moved by their own Procurement, or by others, and sue at their proper Costs to have Part of the Land in Variance, or Part of the Gains.*Champerty shall be punished in all Actions Personal, Real, or Mixt. *2 Inst. 563.*(A. 2.)
Champerty.
What shall be.
Vide Post.
(A. 5.—C. 1,
2.)

(A. 3.)
What shall
not be Cham-
perty.
Vide Post,
(A. 5.)

But it will not be Champerty, if *A.* contracts with *B.* for a Manor, for which *B.* is afterwards impleaded, and *pendente Lite* *B.* conveys it to *A.* 2 *Inst.* 484, 563.

(A. 4.) What shall be Maintenance by Statute.

By the *St. W.* 1. 28. *Clerke de Justice, ne de Vicont, ne mainteine Parties en Quarrels en la Court le Roy, &c.*

So, by the *St. Defin. Consp.* 33 *Ed.* 1. *St.* 2. Who bind themselves by Oath, Covenant, &c. falsely to move, or maintain Pleas.

By the *St.* 1 *Ed.* 3. *St.* 2. 14. None of the King's Council, House, or other Great or Small, by himself or other, by Letter or otherwise, shall maintain Quarrels in the Country to the Lett of the Common Law.

So, by the *St.* 20 *Ed.* 3. 4. None about the King, Queen, or Prince, or other Great or Small, shall maintain Quarrels, &c.

Nor, by the *St.* 1 *R.* 2. 4. Any of the King's Counsellors, Officers, or Servants, or other Person within the Realm.

So, by the *St.* 32 *H.* 8. 9. All former Statutes against Maintenance, Champerty, &c. are confirmed.

And by the *same Statute*, No Person shall unlawfully maintain or procure Maintenance in any of the King's Courts, &c. in any of his Dominions, which have Authority to hold Plea of Land, &c. nor retain for Maintenance of any Suit, &c. on Pain of 10*l.*

(A. 5.)
Buying a
Title, &c.

So, by the *St.* 32 *H.* 8. 9. No Person shall buy or sell, or by any Means obtain any pretended Rights or Titles, &c. to any Manors, Lands, &c. unless he who sells, &c. his Ancestor, or they by whom he claims, have been in Possession thereof, or of the Reversion or Remainder, or taken the Rents or Profits, by the Space of a Year before the Bargain, on Pain to forfeit the Value of the Lands, &c. so bought or sold.

And therefore, if any one, who has a naked Right to Lands sells them, it will be within the Statute: As, if a Disseisee before Entry sell his Land, tho' he has a real Right to it. *Co. L.* 369. *a.*

So, if a Disseisor grant an Estate to *A.* for Life or Years, Remainder to *B.* for Life, in Tail, or in Fee, *B.* cannot contract with the Disseisee, that he shall enter, or recover, and then convey to him. *Co. L.* 369. *b.*

So, if a Feoffment be by an Husband to the Use of himself for Life, and afterwards to his Wife for Life, and afterwards to his Heirs, and then the Husband enfeoffs a Stranger, and dies, and the Wife before Entry sells to *B.* tho' her Entry was congeable. *R.* 1 *Leo.* 166. 1 *And.* 201. *Mo.* 266. *Goldf.* 101.

So, if a Man, who has no Colour of Right or Title, sells it to another, it will be within the Statute, tho' the Conveyance by him be void. *Co. L.* 369. *a.*

As, if *A.* has the Right, and *B.* sells, as Land which descended to him from *D.* his Father. *R.* 2 *Mod.* 67.

So, if a Man who has a Right, obtains Possession wrongfully, he cannot sell within a Year without Danger: As, if a Disseisee disseise the Heir of the Disseisor. *Co. L.* 369. *a.*

But if a Man recover in Ejectment, and has an *Habere facias Possessionem*, but sells immediately, before he be possessed for a Year, it will not be Maintenance. *R. Godb.* 450.

So he, who purchases a pretended Right to a Term for Years, will be within the Statute, which says, *any pretended Right.* *Co. L.* 369. *a.* 2 *And.* 57.

Or a pretended Right to a Copyhold. *Co. L.* 369. *b.* 4 *Co.* 26.

So, if a Lease for Years be accepted from *A.* having a Right, and not in Possession, tho' the Lease be void. *R.* 1 *Leo.* 166.

So the Grantee, as well as the Grantor of a pretended Right, &c. if he knew it, will be within the *St.* 32 *H.* 8. and shall lose the Value of the Land. *Co. L.* 369. *a.* *Vide the Words of the Statute.*

But

But the Jury must find, that the Grantee of a pretended Title knew of it. *R. 1 Leo. 166, 7.*

So, by *W. 2. 13 Ed. 1. 49. Chancellor, Treasurer, Justices, ne nul de Council le Roy, ne Clerke de la Chancery, ne del Eschequer, &c. ne puis recevoir Esglise, Advowson, Terre, &c. per done, ne per achate, ne afermer, &c. tanque come le Chose est en Plee devant nous, &c. Et qui encounter cest Chose face, soit punie a la Volunt le Roy, auxibien celui qui le purchasera, come celui qui le fra.*

And therefore, Justices, King's Counsel, or the Clerk of a Court cannot purchase, or take by Gift, Land, &c. in a Suit *pendente Lite*, tho' the Purchase be *bonâ fide*, and not by Champerty. *2 Inst. 484.*

So, if a Serjeant, Counsel, or Attorney take a Feoffment of Part of the Land *pendente Lite*, in Lieu of their Fees, it will be Champerty. *2 Inst. 564.*

But a Purchase *bonâ fide* by a Stranger *pendente Lite*, is no Maintenance. *2 Inst. 484, 564.*

Or, if a Father enfeoff his Son of the Land *pendente Lite*, for his Assistance. *2 Inst. 564.*

So a Purchase by a Counsel after a Recovery, or a Gift for his Fees, is not Maintenance, if it was not upon an Agreement *pendente Lite*. *Ibid.*

So a Surrender, or Conveyance *pendente Lite*, by a Tenant for Life, or in Tail, to him in Reversion or Remainder, is not Maintenance; for he is the next in Estate. *Ibid.*

Vide Post, (B.)

(B) What shall not be Maintenance.

BY the *St. Art. super Chart. 11. Nest mye a entendre, que home ni poit aver Counsaile des Countours, et des Sages Gents pur son donant, ne de ses procheine Amies.* (*Vide Ante, (A. 5.)*)

And therefore, it is no Maintenance, if a Counsel takes Fees for his Advice, and Assistance. *2 Inst. 564.*

So, if an Attorney expends his own Money for his Client, to be repaid. *Ibid.*

So, if the Father pays Fees for his Son, or *vice versa*, without Expectation of Repayment. *Ibid.*

So, if a Master pays Fees to Counsel for his Servant out of Wages due to the Servant. *Mo. 6.*

So, if a Lessor pays Fees, or maintains the Suit for his Lessee in Ejectment. *2 Rol. 181.*

[If a Mortgagee not a Party in a Suit, advances Money to support the Title, it is not Maintenance. *Sharp v. Carter, T. 1735. 3 P. W. 375.*]

So, if a Man who has a lawful Possession obtains a Conveyance, Release, &c. from him, who has the Right, he will not be within the *St. 32 H. 8. 9.* whereby it is provided, that it shall be lawful for any, in lawful Possession, to get by any Means the pretended Right or Title, which any Person hath to the same Lands, &c. *Co. L. 369. b.*

If he be possessed *in presenti*, or of a Reversion, or Remainder upon the Estate of *A.* who has the lawful Possession, tho' he never received the Rents. *Co. L. 369. b.*

So, if a Man has a tortious Possession, and takes a Release or Conveyance from him, who has the Right, it is not within the Statute, for it does not prejudice any one; As, if a Disseisor takes a Release, &c. from the Disseisee. *Co. L. 369. a.*

So, if a Mortgagor redeems a Mortgage, and takes a Re-assignment from the Mortgagee, he may sell tho' he had not Possession for a Year. *Ibid.*

So, if a Man, who has the Right, recovers the Estate, he may presently sell it. *Ibid.*

Or, if a Man be remitted to his antient Right. *Ibid.*

So, if Tenant for Life, or in Tail, die without Issue, and he in the Remainder before Entry leases to another. *R. 2 Leo. 48.*

M A I N T E N A N C E.

So a Lease for Years, to the Intent to maintain an Ejectment, is not within the Statute; unless it be to a Great Man for Countenance to the Suit. *Co. L.* 369. *R. Sav.* 95.

Tho' the Lease for Years be not to his Heir, who may maintain, but to a Stranger. *R. cont. Sal.* 96.

(C) Remedy for Maintenance.

(C. 1.) By the Common Law.

BY the Common Law, Champerty and Maintenance were inquirable before the Justices in *Eyre*. *2 Inst.* 208.

So, by the Common Law, an Action lay for Champerty or Maintenance. *Ibid.*

And that, in the Courts of *Antient Demefne*, and other inferior Courts, as well as in the Superior. *Ibid.*

(C. 2.) By Statute.

By the *St. W.* 1. 25. Champerty shall be punished *a le volunt le Roy*, viz. at the Suit of the King before his Justices. *2 Inst.* 208, 209.

By the *St. Art. super Chartas*, 28 Ed. 1. 11. A Person attainted of Champerty, *soit forfait en encurr' devers le Roy des Biens, et des Terres le Parnour, a la value de tant come sa Part de son Purchase pertiel Emprise amountor*. (*Vide 2 Inst.* 563.)

By the *St. of Champerty* 33 Ed. 1. *St.* 3. He shall be imprisoned for three Years, and make Fine at the King's Pleasure.

By the *St.* 1 R. 2. 4. The King's Counsellors and Great Officers shall suffer the Pain ordained by the King himself with Advice of his Lords: The lesser Officers or Servants of the King, in the *Exchequer* or other Courts, &c. shall lose their Offices, be imprisoned and ransomed at the King's Will; and all others of the Realm shall suffer Imprisonment and Ransom.

And therefore, the Party may have an Action founded upon any of these Statutes. *2 Inst.* 208, 212, 563.

And by the *St. Art. super Chart.* 11. may have a Writ directed to the Justices, before whom the Plea is depending. *2 Inst.* 563.

So an Action lies by *Qui tam*, &c. upon the *St.* 32 H. 8. 9. for the Penalty of 10*l.* against him who maintains a Suit.

So, by the *St.* 4 Ed. 3. 11. The Justices of one Bench or the other, or of Assize, shall hear and determine, at the Suit of the King or the Party, of Maintainers, Champertors, &c. as well as Justices in *Eyre*; and if straitned in Time may adjourn it into B.

So an Information lies upon the *St.* 32 H. 8. 9. for purchasing a pretended Title. *1 Leo.* 166.

But the Information must say, that the Sale was of pretended Title. *Semb. Cro. Car.* 233.

Maintenance of Infants.

Vide Chancery, (3 R. 6.)

M A L I C E.

Vide Action upon the Case for a Conspiracy, (C. 3.)—*Action upon the Case for Defamation*, (G. 5.)—*Action upon the Case for Mifseafance*, (A. 6.)—*Justices*, (M. 5, &c.)—S. 6.)

M A N. (Isle of,)

Vide Navigation, (F. 2.)

M A N D A M U S.

(A) When it lies.

[*MANDAMUS* is a Prerogative Writ, introduced to prevent Defender from a Failure of Justice, and Defect of Police; and therefore ought to be used on all Occasions where the Law has established no specific Remedy, and where in Justice and good Government there ought to be one. *Rex v. Barker, H. 2 G. 3. 3 B. M. 1265.*]

[*Mandamus* is granted to prevent Failure of Justice, and for the Execution of the Common Law, or of a Statute, or of the King's Charter, but not as a private Remedy to the Party, except on the Statute of Queen Anne. *Per Hardwicke C. J. Rex v. Wheeler, P. 8. G. 2. B. R. H. 99.*]

The Court of *B. R.* has Power to amend all extrajudicial Errors, which tend to the Breach of the Peace, Oppression of the Subject, or other Misgovernance. *R. 11 Co. 98. a.*

And therefore, by Writ of *Mandamus*, may command Right to be done: As, if an Officer elected in a City, Borough, or Corporation be amoved without Cause, he may be restored by *Mandamus*: As, a Mayor. *Ray. 431.*

An Alderman. *2 Bul. 122. 1 Vent. 19.*

A Jurat of a Corporation. *R. 1 Lev. 148.*

A Common Council-Man. *R. 2 Rol. 456. l. 35. Sti. 32.*

A Recorder. *R. 2 Rol. 456. l. 30. R. v. Wells, H. 7 G. 3. 4 B. M. 1999.*

A Town Clerk. *Popb. 176. Noy 78. 1 Vent. 77, 82. 1 Sid. 14. Sti. 457.*

Vide Post, (B.)

A Livery-Man. *Ray. 446.*

A Burgefs. *2 Cro. 506. 1 Sid. 14. 5 Mod. 257.*

A Bailiff, Serjeant, &c. *R. 2 Rol. 456. l. 20, 32.*

So it lies for admitting him, who has Right, tho' he never had Possession of the Office: As, to admit a Mayor, Alderman, &c. *4 Mod. 368. Sti. 299.*

To admit a Town Clerk, elected in Reversion after the Death of *B.* when *B.* dies. *R. Popb. 176. Noy 78.*

An High-Steward, Recorder, &c. *Sti. 355.*

To admit him to a Freedom, who has a Right by Service, Birth, &c. *R. 1 Sid. 107. 1 Lev. 91. Ray. 69.*

Tho' he broke his Covenant in the Indenture of Apprenticeship, by Marriage, &c. *R. 1 Lev. 91. Vide Post, (D. 4.)*

So a *Mandamus* lies for any public Officer, who has no other Remedy to be restored: As, for a Steward of a Court Leet. *Adm. 1 Sid. 40, 169. Ray 12.*

Or, of a Court Baron, if he has a Patent for Life. *Per Hale, 2 Lev. 18. Vide Post, (B.)*

For an Attorney of the Marshal's Court, or other Court. *R. 1 Sid. 94, 152. Ray 56. 94. 1 Lev. 75.*

Treasurer of the New River Water. *Semb. 1 Sid. 169. 1 Lev. 123.*

Scavenger. *1 Vent. 143. Sti. 346.*

Clerk of the Peace. *Sbo. 282.*

So, for a Master of a College. *Ray. 101.*

Or a Fellow of a College, where no Visitor is appointed. *Dub. 1 Mod. 82. Ray 31. Adm. Ray. 111. Cont. 3 Mod. 265. 1 Lev. 23. Adm. 5 Mod. 404.*

R. Cont. Cartb. 92. Vide Post, (B.)

[To the Chancellor, &c. of an University, to restore a Person to Degrees. *Dr. Bentley's Case*. 10 G. Fort. 202. Str. 557. 2 Ld. Raym. 1334.]

N. B. They did not set out that they had a Visitor, or it would have put an End to the Dispute in B. R.]

[To the Keepers of the Common Seal of the University of Cambridge, to put it to the Appointment of High-Steward. *Rex v. Vice-Chancellor of Cambridge*, P. 5 G. 3. 3 B. M. 1647.]

[To admit a Chaplain when there is no Visitor, or when the Visitor is the same Person who ought to admit. *Rex v. Bishop of Chester*, P. 1 G. 2. Str. 797.]

A Fellow of the College of Physicians. R. 1 Sid. 29. Cont. Carth. 92. Vide Post, (B.)

An Usher, or Master of a Grammar School. Ray. 12. Cont. 1 Sid. 40. Dub. Sti. 457.

[To restore an Under-Schoolmaster of a School founded by the Crown. *Rex v. Balliv. de Morpeth*, T. 3 G. Str. 58.]

A Register in the Ecclesiastical Court. D. Mod. Ca. 18.

Or a Deputy Register. R. F. g. 194.

[It lies for a Register of a Bishop's Court, to have his Deputy admitted, tho' not for the Deputy himself. *Rex v. Ward*, H. 4 G. 2. Str. 893.]

To Church-wardens, to restore a Sexton or Parish-Clerk. R. Ray. 211. 1 Vent. 143, 153. R. 2 Lev. 18.

Or, to swear him. R. Mar. 101.

So, if an Office be granted to *A. exercend' per se, vel Deputat'*; if the Deputy be refused, a *Mandamus* by *A.* lies to restore his Deputy. R. 1 Lev. 306, 7.

So a *Mandamus* lies to an inferior Jurisdiction, or Officer, to require that which by the Duty of his Office he ought to do: As to the Mayor, &c. of a Corporation to admit him, who has a Right to a Freedom, or Office. Vide Supra.

[To compel a Meeting of Mayor, Aldermen, &c. requisite to approve a Candidate for a Franchise. *Green v. Mayor of Durham*, H. 30 G. 2. 1 B. M. 127.]

[To a Mayor, &c. disapproving, without Cause, a Person who has a Right to be approved and admitted. Ibid.]

[To a Mayor, to proceed to Election, where there is a Clause to hold over. *Rex v. Mayor of Helston*, T. 9 G. Str. 555.]

[To elect a Mayor after a colourable Election of one. *R. v. Mayor of Cambridge*, H. 7 G. 3. 4 B. M. 2008.]

[It may be granted to go on to Election of a Mayor, tho' there is one *de facto*. *Case of Boffiney*, H. 8 G. 2. Str. 1003. *Case of Aberystwith*, T. 14 G. 2. Str. 1157.]

[And not for a Mayor only, but for other Officers necessary constituent Parts of the Corporation, as Bailiffs, Coroners, Chamberlains, &c. *Case of Scarborough*, H. 16 G. 2. Str. 1180.]

[By a liberal Construction of Stat. 11 G. c. 4. a *Mandamus* may be granted to elect a Mayor, tho' there has been no legal Mayor for some Years. *Rex v. Oxford*, M. 9 G. 2. B. R. H. 178.]

[Two *Mandamus's* may be granted on the Application of different Parties, for the same Election. Ibid. *Rex v. Evesham*.

[On Judgment of Ouster against a Mayor, *Mandamus* cannot be granted till the Judgment is actually signed, and then the Prosecutor has a Right of Priority of Motion for it. *Rex v. West Loe*, P. 3 G. 3. 3 B. M. 1386.]

[To swear in an Ale-taster. *Ravenhill's Case*, M. 11 G. Str. 608.]

[To swear in Director of a chartered Company, as the Amicable Assurance. *Anon.* P. 12 G. Str. 696.]

To an old Officer, to deliver Records, which concern Justice, to the new One. R. 1 Sid. 31.

[To restore to the Office of Yeoman of the Wood-Wharf, being an ancient Office, and a Freehold. *Schriiven and Turner's Case*, P. 2 G. 2. Str. 852.]

[To the Clerk of a Company, to deliver up Books, &c. to the Company, he being removed. *Rex v. Wildman*, M. 4 G. 2. Str. 879.]

[For

[For the Steward of a Borough to attend with the Books at next corporate Assembly. *Calne's Case*, P. 6 G. 2. *Str.* 948.]

[To the *old* Overseer of the Poor, to deliver the Books of the Poor's Rates to the *new* Overseer. *Rex v. Clapham*, T. 24 & 25 G. 2. 1 *Wils.* 305.]

To the Lord of a Leet, to administer the usual Oath to a Port-reeve of a Town elected. R. 2 *Rol.* 82, 85.

[It lies on 11 G. c. 4. to the Steward of a Court-Leet to hold a Court-Leet, and there to swear a Jury to present all Things proper, that they may present *A.* the Person duly elected Mayor. *Rex v. Willis*, M. 12 G. 2. *Andr.* 279.]

[To enforce the Attendance of Tenants of a Manor at the Court-Leet, to make a Jury. *Rector of Wigan's Case*, P. 17 G. 2. *Str.* 1207.]

[To Steward and Homage of a Manor, to hold a Court, and present Purchase-Deeds of Burgage-Tenements; which, when presented, intitle Purchasers to vote for Members. The Homage are *ministerial* in this Case; if the Conveyances are fraudulent and not good in Law, it may be returned. *Rex v. Borough of Midhurst*, M. 24 G. 2. 1 *Wils.* 283.]

[To a Judge of a Court of a Town to give Judgment on a Verdict, though he had granted a new Trial, which he could not do. *Brooke v. Ewers*, M. 5 G. *Str.* 113.]

[It lies to oblige an Officer to do his Duty, tho' there is a Penalty for his Neglect. *Rex v. Everet*, P. 9 G. 2. B. R. H. 261.]

[In doubtful Questions, the Court will not determine on Motion; *Mandamus* shall go, that it may come before them on the Return. *Ibid.*]

To the Spiritual Court, to administer the Oath to one elected-Church-warden. R. *Mar.* 22, 66. R. 1 *Vent.* 115, 267. R. *Ray* 439. 1 *Lev.* 75. R. *Pal.* 51. R. 2 *Rol.* 234. l. 15. *Mod. Ca.* 89. 2 *Rol.* 106, 107. *Lut.* 1010. R. *Carth.* 118. R. *Jon.* 439. *Cro. Car.* 551. [*Rex v. Henchman*, T. 8 G. 2. B. R. H. 130.]

To swear a Sexton, Parish Clerk, &c. R. *Mar.* 101. R. 2 *Rol.* 234. l. 35.

To make a Probate of a Testament. R. *Ray* 235. *Acc.* 2 *Rol.* 107.

Or, to grant Administration to him to whom it belongs. 1 *Sid.* 281, 372. 1 *Lev.* 187. R. *Sti.* 7, 8.

[To grant Administration generally, but not to what Person. *Anon.* T. 9 G. *Str.* 552.]

Or, to absolve an excommunicated Person. 2 *Rol.* 107.

To grant Probate to an Executor. R. 1 *Vent.* 335. R. *Carth.* 457.

And it is not a good Return, that he did not give Caution, being an Insolvent. R. *Carth.* 458.

[To a Dean and Chapter, to admit a Prebendary to his Stall and Voice. *Rex v. Dean and Chapter of Norwich*, H. 5 G. *Str.* 159.]

[To a Bishop to admit a Parson to a Prebend in his Church. *Clarke v. Bishop of Sarum*, M. 11 G. 2. *Str.* 1082. *Andr.* 20.]

To a Justice of Peace, to admit a Constable. *Adm. Noy* 78. *Dub.* 1 *Bul.* 174.

[To allow Constables extraordinary Charges in providing Carriages for King's Forces. *Rex v. Hunt*, H. 3 G. *Str.* 42.]

[For them to compel Treasurer of the County to reimburse Constables extraordinary Charges in providing Carriages for the King's Forces. *Hunt's Case*, E. 4 G. *Str.* 93.]

[To appoint Overseers of an extra-parochial Vill. *Rex v. Rufford*, P. 8 G. *Str.* 512. *Fort.* 321.]

[To Justices, to appoint Overseers in a Hamlet where there never were any, if there are Poor belonging to it, chargeable on another Hamlet, which cannot remove them for want of them. *Rex v. Justices of Westmorland*, T. 19 & 20 G. 2. 1 *Wils.* 138.]

To sign Poor's Rates. *Carth.* 450.

[To a Justice of the *Quorum*, when there is only one to sign a Poor's Rate. *Rex v. Mayor of Worcester*, T. 8 G. 2. B. R. H. 128.]

Tho'

M A N D A M U S.

Tho' there be a former Rate signed, which omits Part of the Parish as not chargeable; for it is not inconsistent to sign both, whereby the Right of those omitted may be contested. *2 Mod. Ca. 335. Vide Carth. 450.*

[To Justices, to swear an Overseer to his Accounts: if they have a legal Objection, they may return it. *Rex v. Justices of Middlesex, H. 19 G. 2. 1 Wils. 125. Vide Justices of Peace, (B. 65.)*]

[To grant Warrant to levy Balance of old Overseers Accounts. *Rex v. Justices of Somersetshire, M. 8 G. 2. Str. 992.*]

[To make a Warrant of Distress on a Poor's Rate, tho' it appears that the Reason of their Refusal was, that they insisted on first summoning and hearing the Parties; but they may return that, or what they please. *Saint Luke's v. Justices of Middlesex, P. 19 G. 2. 1 Wils. 133.*]

[To Justices to swear Surveyors of the Highways. *Rex v. Pettward, T. 9 G. 3. 4 B. M. 2452.*]

To make a Rate upon another Parish for Relief. *2 Mod. Ca. 344.*

[To make a Rate to reimburse a Surveyor of the Highways. *Haffel's Case. M. 6 G. Str. 211.*]

To take Surety for the Peace. *R. F. g. 85.*

[To take Security, on Articles of the Peace exhibited in B. R. *Rex v. Lewis, T. 3 G. 2. Str. 835.*]

[To proceed to Judgment on an Information of a Seizure. *Rex v. Tod, M. 9 G. Str. 530.*]

To take an Appeal by a Teacher in a Conventicle, convicted upon the *St. 22 Car. 2. 1. Sand. Obs. upon the St. 57.*

To admit one to take the Oath, &c. in order to be a Teacher of a separate Congregation. *Mod. Ca. 310.*

[To register and certify a Dissenting-Meeting-House. *R. v. Justices of Derby, M. 7 G. 3. 4 B. M. 1991.*]

[To the Trustees of an endowed Dissenting Meeting-House, to admit one elected to the Use of the Pulpit, as Pastor. *Rex v. Barker, H. 2 G. 3. 3 B. M. 1265.*]

To a Visitor to take an Appeal to him made by a Fellow removed. *Semb. cont. 5 Mod. 453. Vide Post, (B.)*

So it lies to the Mayor of London, to enter up a Judgment upon the Statute for rebuilding London. *R. Ray. 214. 1 Vent. 187.*

To the President and Council of Wales, to admit a Deputy of the Secretary, who had his Office *exercend' per se vel Deput'.* *R. 1 Vent. 110. 1 Lev. 306.*

To the Mayor of a Borough to enrol a Testament, which by Custom ought to be enrolled. *2 Rol. 106.*

Vide Difmes, (M. 8.)

[To one who has turned out the Curate of a Chapel, endowed with Land, who had been appointed, been Weeks in Possession, and had a Licence to restore him; and this, tho' the Right of Appointment is litigated: This is the proper and most effectual Method to try Right to officiate in Chapels, whether it depends on Nomination or Election. *Rex v. Bloer, T. 33 & 34 G. 2. 2 B. M. 1043.*]

[A *Mandamus* must be made out according to the Rule for it, or it will be superseded. *Rex v. Wildman, M. 4 G. 2. Str. 879.*]

[On Motion for *Mandamus* to restore one to be in the Court of Assistants of a Company, there is no Need of Affidavit to shew he was once in, for if he was not, they may return that. *Rex v. Cutlers Company, T. 8 G. 2. B. R. H. 129.*]

[If the Court has proposed to try an Election by Issue, or to proceed to new Election, and one Party refuses it, the Court will insert such Refusal in the Rule, that it may appear authentically to the Jury on Trial. *Rex v. Barker, H. 2 G. 3. 3 B. M. 1265.*]

[By *Stat. 12 G. 3. c. 21.* Any Person intitled to be admitted a Freeman, who shall apply to the Mayor, &c. to be admitted, and give Notice, specifying the Nature of his Claim, and that unless admitted in a Month he will apply to B. R. for a *Man-*

a *Mandamus*, and *Mandamus* afterwards is granted, and the Person is admitted, the Mayor, &c. shall pay Costs.]

(B) *When it does not lie.*

BUT a *Mandamus* does not lie for a private Office: As, to restore the Steward of a Court Baron. 1 *Sid.* 40, 169. *Cont.* if he has a Patent for Life. *Per Hale*, 2 *Lev.* 18. *Acc.* F.g. 194. *Vide Ante*, (A.)

Or, a Proctor in the Spiritual Court. R. 3 *Lev.* 309. 3 *Mod.* 332. *Sbo.* 217, 251, 261. *Skin.* 290.—R. for they have Jurisdiction over the Officers of their Courts. *Carth.* 169, 170.

Or, for the Master of the Water-house of the Lord Mayor; For it is more a Service than an Office. 1 *Vent.* 143.

Or, for a Clerk of a private Company in London. *Mod. Ca.* 18.

Or, a Town Clerk, who was removeable *ad libitum*. 1 *Sid.* 15. (*Vide* 1 *Vent.* 77, 82.) *Vide Ante*, (A.)

So it does not lie for the Admittance of any in an Inn of Court to the Bar. *Sti.* 457. *Ray.* 69. *Mar.* 177.

Or, to admit in the College of Physicians. R. 2 *Sbo.* 178. *Carth.* 92. R. 1 *Lev.* 19. *Vide Ante*, (A.)

[A *Mandamus* to help a general Visitor to visit his College, or to compel an inferior Officer to do his Duty is *felo de se*, and shall be quashed. *Doctor Walker's Case*, H. 9 G. 2. B. R. H. 212.]

[There is no Precedent of a *Mandamus* to a Visitor. D. *Rex v. Bishop of Ely*, P. 11 G. 2. *Andr.* 176.]

[And the Court will certainly not grant it, when it is doubtful whether such Person is Visitor or not. *Rex v. Bishop of Ely*, P. 23 G. 2. 1 *Wils.* 266.]

[It does not lie to a Bishop to grant a Licence to a Parson to preach as Lecturer of a Parish to which he has been elected by a Number of the Inhabitants, where there is no temporal Right in Question, and where another elected by other of the Inhabitants, and admitted by the Rector, is in Possession. *Rex v. Bishop of London*, P. 16 G. 2. *Wils.* 11. *Str.* 1192.]

[Not to the Bishop of a Diocese, who is Visitor, to restore a Prebendary deprived by him for Incontinency, tho' he had not admonished him thrice as the Statutes require. *Rex v. Bishop of Chester*, H. 21 G. 2. 1 *Wils.* 206.]

[If Parson has Power to nominate Parish-clerk, who must be approved of by the Vestry; Parson nominates A. many of the Vestry sign their Approbation, none dissent expressly, but some demand a Poll for B. which is refused, the Court will not grant *Mandamus* to Parson to nominate. *Rex v. Rector of Saint Anne's*. P. 6 G. 3. 3 B. M. 1877.]

So it does not lie for a Fellow of a College, when there is a Visitor R. *Sbo.* 74. R. 3 *Mod.* 265. R. 1 *Sid.* 71. R. 1 *Mod.* 82. 2 *Lev.* 15. R. 1 *Lev.* 23. *Carth.* 168. R. *Ray.* 31. *Adm. Ray.* 102. 1 *Mod.* 84. 2 *Jon.* 175. *Vide Ante*, (A.)

Or, for any Fellow or Scholar of a College; for if it has no special Visitor, the Founder shall be Visitor. R. *Carth.* 92.

Or to the Master of a College, to remove Fellows for not taking the Oaths. *Semb. Skin.* 393, 546.

So it does not lie for an Office not known, unless it be specially described: As, to be one of the eight Men in *Ashbourn Court*, without describing what is his Office. R. 2 *Mod.* 316.

[To give a Man actual Possession, (except it be to restore) but only legal, and then he may maintain his Right. *Rex v. Dean and Chapter of Dublin*, M. 9 G. *Str.* 536.]

So a *Mandamus* does not lie to prevent a Molestation against Law: As, not to molest a Preacher. R. *Sal.* 572.

To make a Rate to reimburse an Overseer; for the Statute does not direct any, but for Relief of the Poor. R. *Sal.* 53. 2 *Mod. Ca.* 338.

[To Overseers, &c. to make an equal Rate. *Rex v. Canterbury*, H. 9 G. 3. 4 B. M. 2290.]

[To make a Rate to reimburse two of the Inhabitants their Charges, in Defence of an Indictment for not repairing a Bridge. *Anon*, M. 4 G. Str. 63.]

[Not to insert particular Persons in a Poor's Rate, tho' Affidavits of their Sufficiency, and that they are omitted to prevent their voting for Members of Parliament. *Rex v. Weobly*, T. 19 G. 2. Str. 1259.]

[To Church-wardens, to call a Vestry to elect Church-wardens. *Anon*. H. 12 G. Str. 686.]

[To Justices of a City to grant a Licence to keep an Alehouse. *Giles's Case*, M. 4 G. 2. Str. 881.]

So it does not lie to do an Act, which the Party may do, or not, at his Discretion: As, it does not lie to a Visitor to receive an Appeal. *Per Holt* M. 11 W. 3. *Usher's Case*, 5 Mod. 453.

[Not to a Mayor, to give the Key of the Town-hall to the Lord of a Manor to hold the Court-Leet in it, as had been usual. *Rex v. Mayor of Wigan*, T. 17 G. 2. Wilf. 76.]

To the Ecclesiastical Court to deliver an Original Will, proved there, to a Devisee of Lands by the same Will. 1 Sid. 443.

To grant Administration to one as next of Kin, after an Administration granted to another. *Per Cur' B. R. inter Blackborow and Davies Pas.* 13 W. 3. (*Reported in Comyn's Rep.* 96.)

[To the Ordinary, to grant Administration *durante minori etate*; for no Law says to whom it shall be granted, *Smith's Case*, H. 4 G. 2. Str. 892.]

[Or to grant Administration with the Will annexed during Minority to a certain Person, nor to grant Administration generally in such Cases. *Barker's Case*, M. 11 G. 2. Andr. 24.]

So, if there be a Suit depending in the Spiritual Court, whether there was a Will or not, a *Mandamus* shall not be granted to grant Administration, till the Suit be determined. R. 5 Mod. 374. 5, [*Rex v. Hay*, H. 9 G. 3. 4 B. M. 2295.]

Or, if such a *Mandamus* is granted when there was a Will, that may be returned. 5 Mod. 375.

So a *Mandamus* does not lie for a Man outlawed, till the Outlawry be reversed. R. Sho. 288.

[Or to swear in one who has had Judgment against him, on a *quo Warranto* for Usurpation. *Rex v. Hearle*, P. 11 G. Str. 625.]

Or, to restore A. who was elected Alderman, &c. in the Place of B. afterwards restored by *Mandamus*; tho' the Place of B. be afterwards vacant: For A. must be elected *de novo*. R. 2 Bul. 122.

So, if he be not wrongfully ousted; as, if he resign. R. 1 Sid. 14.

Or, be only suspended. *Dub.* 1 Lev. 162.

Or lapse his Time: As, if a Mayor be amoved, after his Year elapsed he shall not have a *Mandamus*. R. 1 Sid. 33.

So, if a Peremptory *Mandamus* go, there can be no *Mandamus* for another, upon Pretence that he was well elected, and the other *Mandamus* gained by Artifice, till the Right of Election be tried. R. 2 Jon. 215.

[A *Mandamus* does not lie *ex debito Justitiæ* for every rightful Officer, tho' disseized, for he may bring Affize. *Rex v. Wheeler*, P. 8 G. 2. B. R. H. 99.]

[One who has a legal Right to an Office, is not intitled to have Books delivered by one who has an equitable Right, and therefore not to a *Mandamus* for them. *Ibid.*]

[The Court will not grant cross or concurrent *Mandamus*, without special Reasons. *Rex v. Wigan*, P. 32 G. 2. 2 B. M. 782.]

[If an Election is doubtful, it should be tried by Information *quo Warranto*, not on *Mandamus*. *Rex v. Bankes*, H. 4 G. 3. 3 B. M. 1452.]

[And if a Rule to shew Cause is obtained, and it appears on Affidavits that it was improper for *Mandamus*, the Court may discharge it with Costs. *Ibid.*]

[The Court will not grant a special *Mandamus* to summon the individual Persons who were summoned for a Jury on a former Day to proceed to Election, *Rex v. Bankes*, H. 4 G. 3. 3 B. M. 1452.]

(C) The Form of a *Mandamus*.

(C. 1.) To whom directed.

A *Mandamus* must be directed to those, who are to do the Thing commanded: And therefore, where a Corporation is to elect, &c. it may be directed to them by their Corporate Name.

And if the Corporation be misnamed, there shall be no Restitution thereon. R. 2 Jon. 52. Vide *Cartb.* 501. *Sal.* 700.

[The Court, when they grant *Mandamus*, will not specify the Person to whom it shall be directed: It is at the Peril of the Person who desires the Writ to direct it to a proper presiding Officer. *Rex v. Wigan*, P. 32 G. 2. 2 B. M. 782]

[It need not alledge the Person to whom it is directed is the Person to whom it appertains, &c. and if it is not directed to the proper Person, he must return it so. *Rex v. Ward*, H. 4 G. 2. *Str.* 893.]

[The Rule to shew Cause why a *Mandamus* should not issue to chuse a Mayor, should include the Mayor *de facto*, and he should be served. *Rex v. Bankes*, H. 4 G. 3. 3 B. M. 1452.]

If the Corporation be, Mayor, Aldermen and Commonalty, a Writ to the Mayor, Burgesses and Commonalty is bad. *Sal.* 433.

So, if a Writ be *Ballivis*, &c. *Gippi*, and not *Gipwici*. *Sal.* 435.

[If the Right of Election is in the Mayor and Aldermen, and the *Mandamus* is directed to the Mayor, Aldermen and Common-Council, the Court will grant *supersedeas*, *quia improvide*. *Rex v. Mayor of Norwich*, T. 3 G. *Str.* 55.]

[If the Power of Motion is in the Mayor, Aldermen, *et al' de communi concilio*, and the Writ is directed to the Mayor, Aldermen and Common-Council, it is well. tho' the Word *al'* is omitted. *Pees v. Mayor of Leeds*, M. 12 G. *Str.* 640.]

If directed to those, who ought to do it, tho' they are only Part of the Corporation, it is sufficient. R. *Sal.* 699, 701. *Cartb.* 501.

And if it be directed to them and more, it will be bad. *Per* 3 J. *Holt cont.* *Sal.* 701.

So, if a Writ be to A. which commands B. to restore, &c. it shall be quashed. *Sal.* 436.

But it is sufficient, if it be directed to the Corporation, tho' Part only are to do that which is commanded by the Writ. 1 *Rol.* 409.

If directed to the Mayor and Burgesses, *quod eligetis et juretis secundum Auctoritatem vestram*, when the Burgesses only are to elect, and the Mayor only to swear. R. 2 *Mod. Ca.* 112, 128.

(C. 2.) Must be to make Election.

So it ought to be granted, to proceed to an Election to the Office, and not to elect a particular Person. R. 2 *Bul.* 122. R. 2 *Rol.* 456. l. 25.

If several are removed, it must be for each by himself; for several cannot join. R. 5 *Mod.* 11. *Sal.* 433, 436. 2 *Mod. Ca.* 209.

[It must not be to admit all Persons having a Right; if the Writ is so drawn up it shall be superseded. *Rex v. Mayor of Kingston*, H. 10 G. *Str.* 578.]

[If there is a Custom to give twenty-four Hours Notice of Election, the Court will not fix a Day, nor order six Days Notice. *Evesham's Case*, P. 6 G. 2. *Str.* 949.]

(C. 3.) Must shew the Party ought to be admitted.

So the Writ of *Mandamus* must suggest all that is requisite to shew the Party ought to be admitted. *Mod. Ca.* 310.

[So

[So if the Suggestion of the Writ is, that he has a Right (there set forth) to be admitted on Payment of a reasonable Fine, he need not shew how or by whom it is to be assailed. *Moore v. Mayor of Hastings*, H. 10 G. 2. B. R. H. 362.]

A *Mandamus* to Overseers to account must shew, that there was no other Remedy. 5 *Mod.* 420, 1.

But a *Mandamus* to do, &c. is sufficient, tho' the Words, *vel Causam nobis significes*, &c. be omitted. R. 5 *Mod.* 314. *Skin.* 359.

(C. 4.) How teste'd.

So a *Mandamus* must be teste'd within Term. 1 *Sid.* 304. *Vide Abatement*, (H. 14.)

Must have fifteen Days between the *Teste* and Return, if it goes above forty Miles, otherwise only eight Days. *Sal.* 434.

[Must have fourteen Days between the *Teste* and Return if it goes above forty Miles, otherwise only eight Days, and one Day is to be taken inclusive, the other exclusive. *Rex v. Major de Dover*, M. 7 G. Str. 407.]

But a *Mandamus* may be amended before the Return. *Mod. Ca.* 133.

(D) Return of a Mandamus.

(D. 1.) By whom it shall be made.

THE Return of a *Mandamus* shall be made by those to whom the Writ is directed.

If the Writ be directed to the Bailiffs, &c. of a Corporation to swear others elected Bailiffs, it shall be returned by the old Bailiffs, tho' others have been sworn to the same Office; for if the Old swear Others not duly elected, they continue Bailiffs. *Mod. Ca.* 133.

But, if the Return be by the Mayor and Burgeses to whom directed, it shall not be refused upon a Suggestion, that the major Part did not consent. *Sal.* 431. *Carth.* 500.

Or, that the Mayor made the Return without Assent of the Corporation. *Sal.* 432.

(D. 2.) How made.

A Return to a *Mandamus* may be received without Oath of the Truth. R. 1 *Sid.* 257.

Need not be under the Common Seal. 1 *Sal.* 192.

Or signed by the Head of the Corporation. 1 *Sal.* 192. *Skin.* 368.

So the Court will not direct how it shall be made.

Nor give a Rule for a View of the Charter; tho' they shall have it in an Action for a false Return. *Sal.* 430.

By the *St. 9 Ann.* 20. A Return to a *Mandamus* for admitting or restoring to any Office or Freedom in a Corporation, shall be made to the first Writ.

So the Court may require, that the Return be made upon Oath. *Per Dod. Pal.* 455. *Diēt. Ray.* 365.

Or, at a Day certain. *F.g.* 4.

[If the Return is made, and signed by the Mayor, and delivered to Prosecutor's Agent, and the Mayor dies, the Return may be filed afterwards. *Semb. fed Q. Rex v. Holmes*, H. 5 G. 3. 3 B. M. 1641.]

(D. 3.) What shall be a good one.

The Return to a *Mandamus* for Restoration to an Office may be, *that he was never elected.* (*Vide F.g.* 195.) *Vide Post*, (D. 4.)

[That he was not elected Churchwarden. *Rex v. Harwood*, T. 11 G. 2 *Ld. Raym.* 1405.]

That

That he was removeable ad Libitum, without other Cause, when this is warranted by Custom or Charter. R. Ray. 188. 1 Sid. 461. 1 Vent. 77.

[And this without shewing Summons, or that the Office is filled up. *Rex v. Church-wardens of Tbame*, M. 5 G. Str. 115.]

[That he was guilty of Bribery, and therefore they removed him, having Power to remove. *Rex v. Mayor of Carlisle*, M. 9 G. Fort. 200.]

[That he is an Officer at Pleasure, and on Summons to chuse another, they chose another, and thereby A. was amoved, good; for a new Election is an actual Amotion. *Rex v. Mayor of Canterbury*, M. 12 G. Str. 674.]

So, if the Writ be to restore A. *debito Modo elect'*, the Return may say in the Words of the Writ, *quod non fuit debito Modo elect'*. Sal. 434.

If a Writ be to admit two Churchwardens *debito Modo elect'*, it may say; *non fuerunt debito Modo elect'*; for both must be so, otherwise the Writ is insufficient. Sal. 433, 4.

The Return must shew the Power * to amove, that there was such Cause • [Vide 2 Str. for Removal, that he was summoned, and upon Appearance could not excuse himself; wherefore he was amoved, according to the Power.

Or, that he was summoned, and did not appear.

Or, that he appeared; for then a Summons is not material. Sal. 428.

If the Return says, *quod procuraverunt eum summoniri*, it is sufficient. R. 1 Vent. 19.

That he was summoned, tho' it does not shew, for what Cause, specially. Semb. 5 Mod. 259.

Quod fuit auditus de Materiis objectis, tho' it does not say, that he was summoned; for the Intent of the Summons is, that he may be heard. Semb. 5 Mod. 259. Sal. 428.

So a Return which says, *fuit amotus per Majorem et Burghenses* is sufficient, tho' the Power be given to the Mayor, and Burghesses who had been Mayors: for it shall be intended, that all the Burghesses were present and assented: And if there was not the Assent of the major Part of those who had been Mayors, an Action lies for a false Return. R. 1 Vent. 20.

So, if it says, another was elected Mayor before the Writ to him, and *ad hoc est Major*, without saying, *debito Modo electus*. Dub. Ray. 365.

So, if the Return be, *quod fuit amotus* 21 Aug. and in another Part, that he continued in Office till 25th December, which is contradictory; yet the Return will be good, for it is Surplusage. 1 Vent. 144.

Quod fuit debito modo amotus. 5 Mod. 11.

It is not necessary, that the Removal should be under the Common Seal; for, being *per Majorem & Aldermannos*, it shall be intended. R. 1 Vent. 77, 82, 342.

[If Commissioners of Sewers, on a *Mandamus* to make a Rate, return, that the Commission expired four Days after the Writ was delivered, and so they had not Time, it is good. *Rex v. Commissioners of Sewers in Essex*, P. 13 G. Str. 763. Ld. Raym. 1479.]

[To a *Mandamus* to licence Usher of a School, Bishop may return, he is inquiring into the Truth of an Accusation on a *Caveat*. *Rex v. Bishop of Litchfield*, M. 9 G. 2 Str. 1023.]

[To a *Mandamus* to restore A. who was duly elected, sworn, and admitted, (mentioning no Time) that A. was on 29th August duly elected, but that neither at his Election nor since, *nor yet*, is he sworn or admitted, and therefore, &c. is a good Return. *Rex v. Mayor of Lynn*, H. 11 G. 2. Andr. 105.]

[To a *Mandamus* to grant Probate to Executor, that before the Writ, and now is pending a Suit in the Prerogative Court touching the Validity of the Will, is a good Return. *Rex v. Bettefworth*, H. 12 G. 2. Andr. 365. 4 B. M. 2295.]

[To a *Mandamus* to grant Administration to the Husband of Deceased, that Husband had admitted in a Suit, that by Deed before Marriage he had agreed she should make a Will, which she had made, and Suit was depending for the Administration with the Will annexed, is good; for the Husband's Consent appears. *Rex v. Bettefworth*, T. 12 G. 2. Str. 1111.]

[To *Mandamus* reciting, that there are substantial Inhabitants in *A.* therefore to appoint Overseers; that *A.* is extra-parochial, and is not, nor is, nor ever was, reputed, a Vill or Township, is good, though it answers not the Supposal as to substantial Inhabitants. *Rex v. Welbeck*, M. 14 G. 2. Str. 1143.]

[To *Mandamus* to two Justices, to proceed and give Judgment in a Complaint depending before them, that they have heard and determined the Complaint, is good. *Rex v. Richardson*, T. 16 G. 2. Wils. 21.]

[On *Mandamus* to Justices to register and certify a Dissenting Meeting-House, they may return, "Not within the Qualifications." *Rex v. Justices of Derby*, M. 7 G. 3. 4 B. M. 1991.]

[The Return is good, if it pursues the Suggestion of the Writ, as if it is suggested, that *A.* was chosen in *Easter Week*, and the Return is, that he was not chosen in *Easter Week*. *Rex v. Penrice*, T. 18 G. 2. Str. 1235.]

[Return to *Mandamus* to admit or shew Cause may return any Number of consistent Causes. *Wright v. Fawcett*, P. 7 G. 3. 4 B. M. 2041.]

(D. 4.) What not.

(D. 4.)
If it do not
shew the Cor-
poration had
Authority to
remove, &c.
•[Vide 2 Str.
819.]

But a Return is not good, If it does not shew, that the Corporation has Authority to remove, and how. *

So, a Return upon a *Mandamus*, directed to *A.* Mayor, *That before the Writ awarded he was removed, and B. elected, and now is Mayor*; for by a collusive Resignation of his Office, the Return may be evaded. *R. Ray.* 431. *Dub. Ray.* 365. *R. 2 Jon.* 177.

If it does not shew, that the Party was summoned, or heard to the Matters objected against him. 11 Co. 99. a. Sti. 151, 447. *Vide Ante*, (D. 3.)

[If it does not set forth that the Party deprived was summoned. *Dr. Bentley's Case*, 10 G. Fort. 202. Str. 537. 2 Ld. Raym. 1334.]

N. B. They did not set out that they had proceeded according to the Civil Law, which they might have done, by which they can proceed in the Absence of the Party accused.]

[It is not sufficient to say, the Common Council was in due Manner met and assembled; it must expressly alledge that they were all summoned. *Rex v. Liverpool*, H. 32 G. 2. 2 B. M. 723.]

And, *licet saepius requisitus*, is not sufficient. 5 Mod. 258. *R. 4 Mod.* 37.

If it does not answer to the Supposal of the Writ; and therefore, if the Writ supposes, that they ought to elect Persons not in Office three Years before, it is not sufficient to say, *that by the Charter they ought to elect out of Aldermen, and they have elected out of the Aldermen*. *Sal.* 431.

If the Writ supposes them Capital Burgeses, and the Return says, *that they did not take the Sacrament before Election*; for they might have been elected at another Time. *Sal.* 432.

If a Return to a *Mandamus*, for swearing Churchwardens elected by the Parishioners, according to the Custom, says *Quod Lis pendet* in the Ecclesiastical Court concerning the Custom *indecisa*; for the Ecclesiastical Court cannot try the Custom. *R. Ray.* 440. F.g. 195.

[If to a *Mandamus* to swear in a Churchwarden, it is returned that the Bishop of *A.* did inhibit the Archdeacon, whose Official Defendant is, to proceed, it is bad, if it do not aver that the Parish is in the Diocese of *A.* for the Court cannot take Notice of it. *Rex v. Simpson*, M. 11 G. 2 Ld. Raym. 1379. Str. 609.]

Or, if the Return be, *quod non fuit electus*, generally. 2 Mod. Ca. 380, 325. *Semb. cont.* F.g. 195. *Vide Ante*, (D. 3.)

[If to a *Mandamus* to swear in a Churchwarden, the Archdeacon return, *non fuit electus*, it is bad. *Rex v. White*, M. 11 G. 2 Ld. Raym. 1379. *Sed per Ld. Raym.* This is certainly wrong, and so ruled to be a good Return in *Rex v. Harwood*, T. 11 G. 2 Ld. Raym. 1405.]

So it cannot be returned, *that the Borough is within a County Palatine*. 1 Sid. 92.

That

That an Apprentice married contrary to his Indenture; for that is only a Breach of Covenant. R. Ray. 92. 1 Lev. 91. *Vide Ante, (A.)*

[To a *Mandamus* to admit the Master of *Catherine Hall* to a Prebend, under Letters Patent, returned, that by their Statutes no Person who is Prebendary of another Church can be admitted, that the said Master is Prebend of *Saint Paul*, and therefore they cannot admit, not allowed, because said Letters-patent had been confirmed by Act of Parliament and peremptory *Mandamus*, granted. *Rex v. D. & Cap. of Norwich*, H. 5 G. Str. 159. Fort. 222.]

[That the Party had misbehaved as *Chamberlain*, and therefore they had removed him from being a *capital Burgeſs*, is bad. *Rex v. Mayor of Doncaſter*, M. 3 G. 2. *Ld. Raym.* 1564.]

[On a *Mandamus*, on the Complaint of the Register for Life of a Bishop's Court, to admit a Deputy, if the Commissary return, that a former Deputy had been removed, and had appealed, and that Delegates had issued Inhibition to do Nothing to the Prejudice of Appellant pending the Appeal, which was not yet determined, and therefore he could not admit, &c. it is bad; for he is but ministerial, and must execute his Part. *Rex v. Ward*, H. 4 G. 2. Str. 893.]

[That cross Suits are depending before him, and that he cannot admit till he shall have judicially determined who was elected, is bad on cross *Mandamus's* to admit *A.* and to admit *B.* he must obey both *Mandamus's*, and admit both *A.* and *B.* *Rex v. Harris*, T. 3 G. 3. 3 B. M. 1420.]

[If the Return admits the Party's Qualification, that there are five Court-Days at which Persons should be admitted, that he had Notice and did not appear, and therefore cannot be admitted, it is bad, unless it sets forth, that he is tied up to these five Days. *Rex v. Whiskin*, T. 10 & 11 G. 2. Andr. 1.]

[To *Mandamus* to grant Administration to Husband of Deceased, that her Mother had given her Effects to her separate Use, that she had made her Will which was litigating, is bad; for here no Assent of Husband's appears as to these Effects, and she may have others. *Rex v. Betteſworth*, M. 13 G. 2. Str. 1118.]

[To *Mandamus* to admit a Man who is a Quaker, Member of the *Turkey Company*, it is not good to say he would not take the Oath prescribed by 26 G. 2. c. 18. his Affirmation is sufficient. *Rex v. March*, P. 33 G. 2. 2 B. M. 999.]

[That an Alderman had totally left the Burough (when he had only left it four Months, and no Notice given him.) *Rex v. Mayor of Leicester*, P. 7 G. 3. 4 B. M. 2087.]

So the Return to a *Mandamus* shall be disallowed, if it be not certain and positive; for no Answer can be given to it. 11 Co. 99. b. And therefore, if it says, *Non fuit debito Modo electus*, it is bad; for that is a Negative Pregnant. Dub. ^(D. 5.) If it be not certain.

Ray. 365. R. 1 Sid. 209, 210. *Semb. cont. Sbo.* 253. R. cont. *Cartb.* 170.

So, if it says, *Non fuit amotus per nos. Semb. but held Cont.* 1 Sid. 210.

Non constat quod fuit electus. R. 1 Vent. 267. *Ray.* 153.

Tempore Brevis non fuit constitutus. R. 1 Vent. 111. 1 Lev. 306.

Quod servivit ut Journeyman potius quam Servus. R. Ray. 92.

Quod ante Advent' Brevis fuit electus pro Anno, et ad finem Anni amotus, without saying at what Time. 5 Mod. 10.

That B. had so many Votes, and the Plaintiff only so many. R. Mod. Ca. 309.

So, *That A. and B. were not elected*, without saying, *nec aliquis eorum.* R. Mod. Ca. 89.

Or they ought to make a Special Return, that a Custom was claimed to elect two, or that they had equal Votes, or are jointly elected, &c. *Per Holt Mod.* Ca. 89.

So, if it says, *quod procuraverunt A. eum summonere*; for that is not direct, that he was summoned. 1 Vent. 19.

That he was heard de aliis Criminibus ei objectis, without saying, what, before whom, or in what Place. *Semb.* 5 Mod. 258.

That he was auditus in Communi Concilio, without saying, by whom, &c. 5 Mod. 258.

That

That he did not account for Money to the Corporation, without saying, that he was requested and refused. 5 Mod. 259.

That he did not take the Oath required by the St. 13 Car. 2. before the Mayor, without saying, or before Justices of the Peace, who by the same Statute have also Authority to administer it. R. 5 Mod. 318.

Or, that he did not take it before them; when, before Justices of Peace, or two of them, is sufficient. R. Sal. 429.

So, if they return a Custom to remove ad Libitum, only by way of Recital, without saying positively, that there is such a Custom. R. Sal. 430.

If they return, no Sacrament taken before Election, per quod Electio vacua, et non sunt Capitales Burgenſes; for that is only an Inference from the Premises. R. Sal. 432.

So, if the Return consist of several inconsistent Matters: As, Misbehaviour, Bribery, and not elected. Sal. 436.

Yet, if it appears by the Return, that he ought not to be restored, &c. it is sufficient, tho' the Return be insufficient: As, if it appears, that he resigned, tho' the Return be not certain, he shall not have a peremptory Mandamus. R. 1 Sid. 14. R. Sal. 433.

Yet, where a Man was removeable ad Libitum, where the Return was of a Removal for a Cause that was insufficient, he had a peremptory Mandamus. R. Sal. 429, 435.

So a mere Misprision in a Return may be amended. Sho. 273. Vide Amendment, (G. 1.)

(D. 6.) Remedy for a false, or no Return.

If an Officer make a false Return to a Mandamus, an Action upon the Case lies for the Party grieved; and if he obtains a Verdict, he shall have Restitution. 11 Co. 99. b.

[In an Action for a false Return, what is only a Circumstance need not be proved; as, that Plaintiff after he was elected presented himself to be sworn. Batson v. Sayer, M. 13 G. Str. 728.]

[On Action for false Return, of non fuit electus, to a Mandamus, to deliver the Insignia, &c. to a Town-Clerk, Plaintiff need not prove taking the Sacrament within the Year before Election, if the Trial is above six Months after the Election without Prosecution. Crawford v. Powell, 33 & 34 G. 2. 2 B. M. 1013.]

And a peremptory Mandamus for his Restitution is of Right, when the Return is falsified. Sal. 430.

So, by the St. 9 Ann. 20. On Return to a Mandamus, the Person prosecuting it may plead, and traverse all or any material Facts contained in the Return: To which the Persons making the Return may reply, take Issue, or demur; and such further Proceedings shall be, as if an Action on the Case had been brought for a false Return.

And the Issue joined shall be tried, where the Issue in an Action on the Case might be tried.

And if a Verdict be for the Prosecutor, or a Judgment on Demurrer, by Nil dicit, or for Want of Replication, or other Pleading, he shall recover Damages and Costs, as he might in an Action on the Case, to be levied by Capias ad Satisfaciendum, Fieri facias, or Elegit.

And a peremptory Mandamus shall go, as if the Return had been judged insufficient.

So the Person making the Return, if Judgment be for him, shall recover Costs to be levied as aforesaid: Or, if Judgment be against him, he shall not be liable to be sued in another Action for such Return.

Before that Statute, if a Verdict was for the Plaintiff in an Action for a false Return, a peremptory Mandamus went. Skin. 670.

But an Action upon the Case does not lie for a false Return, till Judgment be given upon the Return. Semb. 2 Lev. 238.

So there shall not be a peremptory *Mandamus* in B. R. upon a Verdict for the Plaintiff in Action for a false Return in C. B. R. *Sal.* 428.

[No peremptory *Mandamus* shall go pending Error on Action for false Return. *Ruding v. Newel*, T. 7 G. 2. *Str.* 983.]

[A peremptory *Mandamus* is not a judicial Writ, founded upon a Record, but a mandatory Writ, which the Court grants when they are satisfied of the Parties Right.]

[A peremptory *Mandamus* may go before any formal Judgment,]

[If Judgment for Defendant, on an Action for a false Return, be reversed in the Exchequer-Chamber, and Parliament, peremptory *Mandamus* shall go. *Foot v. Prowse*, P. 11 G. *Str.* 697.]

So, if upon Amotion or Disfranchisement a Man be amoved with Force, imprisoned, &c. he shall have Trespass, in which the Cause of Amotion may be pleaded, and determined by the Court. 11 Co. 99. b.

So an Information lies for a false Return, where the publick Government is concerned. 1 *Sal.* 374.

If the Return be under the Common Seal, the Information may be against the particular Persons, who procured it. *Ibid.*

[Where the *Mandamus* is not for a private Right, so that there cannot be an Action for a false Return; nor on *Stat.* 9 Ann. c. 20. so that the Return may be traversed, nor the Return wrong, so that there may be peremptory *Mandamus*, the Court will grant Information, as for a false Return, to try the Fact, as, whether two Townships shall join in Maintenance of their Poor? *Rex v. Spotland*, M. 9 G. 2. B. R. H. 184.]

So, if no Return be made to a *Mandamus*, there shall be an *Alias* and *Pluries*, and thereon an Attachment, without hearing Counsel to excuse the Contempt. *Sal.* 434. *Pal.* 455.

And the Court, if necessary, may give a little Time, viz. two or three Days for the Return of each Writ. *Per Holt Mod. Ca.* 25.

Or may make a the first Writ, or the *Alias* peremptory. *Mod. Ca.* 25. D. *Skin.* 669.

Or make a peremptory Rule for a Return of the first Writ, upon which there shall be an Attachment. *Sal.* 429. *Semb. Lat.* 230. *Pal.* 455.

[The Court will make a Rule to return a *Mandamus*, to admit a Man into a trading Company. *Dacosta v. Russia Company*, M. 1 G. 2. *Str.* 783.]

[If a *Mandamus* directed to two is not returned, the Court will grant an Attachment against both, tho' one was willing to obey. *Bailiff of Bridgenorth's Case*, T. 2 G. 2. *Str.* 808.]

[If a *Mandamus* is not returned, because the Mayor and others to whom it is directed are of different Opinions, the Court instead of Attachment will, by Consent, direct the Right to be tried in a feigned Issue. *Rex v. Rye*, T. 32 & 33 G. 2. 2 B. M. 798.]

[If the Mayor makes a Return in the Name of the Town-Clerk and free Burgesses, without their Consent, it is a Contempt, and Attachment shall go. *Rex v. Hoskins*, H. 9 G. 2. B. R. H. 188.]

So, by the *St.* 9 Ann. 20. In Cases of Officers in Corporations, &c. the Return shall be made to the first Writ of *Mandamus*.

[A *Mandamus* in Town (as to the Judge of the Prerogative Court) should be returned *instante* at the Return. *Rex v. Bettsworth*, H. 3 G. 2. *Str.* 857.]

[The Court expects a Return, and will not determine on Affidavits, where the Party has not Opportunity to right himself by an Action. *Rex v. Whaley* T. 13 G. 2. *Str.* 1139.]

[If the Party prosecuting a *Mandamus* traverses the Return, and there is a general Verdict for him in Part, and a Special Verdict, and the Court of Opinion with him, but no Damage found, the Court cannot grant a Writ of Inquiry; there cannot be Judgment for Costs, nor can there be a peremptory *Mandamus*. If Judgment is entred, that the Return is not sufficient to bar A. from being restored, and that it be therefore quashed; it shall be reversed, and *venire facias de*

M A N D A M U S.

now awarded. Kynaston v. Mayor of Shrewsbury, T. 9 G. 2. Str. 1051. B. R. H. 295, 377.]

[In such Case, the Person making the Return would be liable to an Action for Damages. *Ibid.*]

[On Consent, the Court will give Defendants leave to withdraw their Return, and order a peremptory *Mandamus*. *Rex v. Barker, P. 3 G. 3. 3 B. M. 1379.*]

M A N D A V I B A L L I V O.

Vide Retorn, (D. 3.)

M A N O R.

Vide Copyhold, (Q. 1, &c.)—Dismes, (C. 4.)

M A N S L A U G H T E R.

Vide Justices, (M. 15, &c.)

M A R I N E L A W.

Vide Admiralty, (E. 10, &c.)

M A R I N E R.

Vide Admiralty, (E. 15.)—Navigation, (I. 5.)—Uses, (N. 2.)

M A R K E T.

(A) *Market.*

A Market is the Privilege within a Town to hold a Market. *Bl. Nom. Verb. Market.*

And the usual Place where a Market is held, is The Market, not every Place within the same Town. *Godb. 131.*

(B) *Fair.*

E V E R Y Fair is a Market, not *à contra*. *2 Inst. 406, 221.*

And therefore, where any Statute speaks of a Fair, a Market shall be also comprehended. *Ibid.*

If the King grant a Fair generally, the Grantee may keep it where he pleases. *3 Mod. 108.*

So, if he grant a Fair to be held in such a Town, Place, &c. he may keep it in what Part of the Town he pleases. *Ibid.*

(C) *Trbo*

(C) Who shall have a Market, &c.

(C. 1.) What Grant shall be good.

NONE can have a Fair or Market, but by Grant or Prescription. 2 Inst. 220.

So a Fair or Market by Prescription shall not be extinct by the Soil coming to the Crown, as other Franchises are. Mo. 474.

Otherwise, if the Fair or Market commenced by Grant. Ibid.

(C. 2.) What not.

But a Grant of a Fair, or Market, has usually a Clause, *quod non fit ad Nocumentum, &c.* And therefore, if it be to the Prejudice of the King or Others in any Respect, the Patent shall be avoided. 2 Inst. 406. 2 Rol. 476. Vide Post, (C. 3.)

If a Patent for a Fair, or Market be to the Nufance, it may be repealed by ^(C. 3.) How avoided. Scire Facias. 2 Inst. 406. 2 Vent. 344. Semb. 2 Rol. 476.

Tho' an *Ad quod Damnum* went before the Patent, R. 2 Vent. 344.

Or the Person, who has the Annoyance, may have a *Quod permittat* to throw down down such Fair or Market. F. N. B. 184. A.

Or, shall have an Affise of Nufance. F. N. B. 184. A. 2 Inst. 406.

Or, an Action upon the Case. 2 Sand. 172. 1 Lev. 296.

And by the St. W. 2. 13 Ed. 1. 24. An Affise of Nufance lies against an Alience. 2 Inst. 405.

If a Market or Fair be erected too near my antient Fair or Market upon the same Day, it is a Nufance, and shall be revoked. 2 Rol. 140. l. 10.

Tho' the Words (*nisi fit ad Nocumentum*) are omitted in the Patent. 2 Rol. 140. l. 17.

So, if it be the Day before. R. after Verdict where it did not appear that the second Market was by lawful Authority. 2 Sand. 174. Fl. l. 4. c. 28. S. 14. 1 Lev. 296.

But if it be the second or third Day after, it is no Nufance. Fl. l. 4. c. 28. S. 14.

If new Houses are built in one Part of D. where I have a Market in another Part of D. and Merchandizes are there sold, it is a Nufance. 2 Rol. 123. C.

A Market, or Fair erected, *infra sex Leucas et Dimidiam et tertiam Partem Dimidia*, is too near, if it be also injurious; *quia rationalibes Dietæ constant ex 20 Milliaribus.* Fl. l. 4. c. 28. S. 13.

But *ultra talem Terminum non est vicinum.* Fl. l. 4. c. 28. S. 13.

Et poterit esse vicinum et infra prædict' Terminos, et non injuriosum. Fl. l. 4. c. 28. S. 14.

If a Fair or Market be to the Annoyance of the King, or his People, in any Respect, it is a Nufance, tho' the Patent says, *si non fit ad nocumentum Feriarum vicinarum.* 2 Inst. 406.

But whether it be to the Nufance or not, is Matter of Evidence. 2 Sand. 174.

(D) How a Fair, or Market, shall be held.

BY the St. North 2 Ed. 3. 15. The Lord of a Fair, at the Commencement of the Fair, shall publish for what Time it shall continue, and shall not hold it beyond his due Time, otherwise it shall be seised into the King's Hands.

By the St. 5 Ed. 3. 5. If a Merchant sell after the Time published, he shall forfeit double the Goods sold.

By the St. 27 H. 6. 5. A Fair or Market shall not be held upon Principal Feasts, Sundays or Good Friday, (four Sundays in Harvest excepted,) upon Forfeiture of all Goods sold, to the Lord of the Franchise. And he that has no Day for

for it, but only such Festival Days, shall hold his Fair or Market within three Days before or after, Proclamation being first made, and he that has other Days sufficient, shall hold it the full Number of Days allotted for his Market, or Fair, such Festival Days, &c. excepted.

The antient Law was; *Die Dominico si quis Mercaturam egerit, ipsa Merce et 30 præterea Solidis mulctatur.* 2 *Inst.* 220.

By the *St. Win.* 13 *Ed.* 1. 6. Fairs or Markets shall not be kept in Church-Yards.

But a Prescription to hold a Fair 29th September is good, tho' it may be a Sunday; for a Fair upon that Day is not void, tho' the Goods then sold shall be forfeited by the *St.* 27 *H.* 6. 5. *Cro. El.* 485.

(E) Sale in Market Overt.

A SALE or Contract, in a Fair, or Market Overt, changes the Property, against the Party and Strangers. 2 *Inst.* 220, 713.

Against an Infant, *Fême Covert*, *Non Compos*, a Man in Prison, or out of the Realm. 2 *Inst.* 713.

Tho' the *Fême Covert*, &c. be an Executor or Administrator. *Ibid.*

Tho' no Toll paid. 2 *Inst.* 714.

So, a Sale in an open Shop in London of proper Goods, for every Day, except Sunday, there is a Market there. 5 *Co.* 83. *b.*

So, in Bristol, or elsewhere, by Custom. *Dub. Mo.* 625.

But a Sale out of a Fair, or Market, does not change the Property against the rightful Owner, who is no Party. 2 *Inst.* 220.

So the King cannot grant, that a Shop shall be a Market Overt. *R. Mo.* 625.

So a Sale in a *Covert* Place within a Fair, or Market, does not change the Property: As, in a Back-room or Warehouse. *R.* 5 *Co.* 83. *b.* *R. Mo.* 360. *R.* 1 *And.* 344. *Poph.* 84.

Or, behind a Hanging or Cup-board, where a Man passing before the Shop cannot see. *R.* 5 *Co.* 83. *b.* *Mo.* 360. *R.* 2 *Rol.* 122. *l.* 50.

Or, when the Windows of the Shop are shut. 1 *And.* 344. 2 *Rol.* 122. *l.* 47.

So, if the Sale be of Goods improper and foreign to the Owner or Trade of the Shop: As, Plate in a Scrivener's Shop, &c. For a Shop in London is not a Market, except for Goods proper to it's Trade. *R.* 5 *Co.* 83. *b.* 2 *Rol.* 122. *l.* 40. *R. Poph.* 84. *Mo.* 360. *R.* 2 *Cro.* 69. *R.* 1 *And.* 344.

A Jewel in a Shop, which does not belong to a Goldsmith. *R.* 2 *Rol.* 122. *l.* 40.

So, if the Sale be covinous. 2 *Inst.* 713. *Jon.* 164.

As, where the Buyer knows that the Seller has no Right. 2 *Inst.* 713.

Or the Seller be of such Age, that the Buyer knows him to be an Infant. *Ibid.*

Or, if the Buyer knows the Seller to be a *Fême Covert*, where she does not use a Trade for such Things, and does it without the Consent of her Husband. *Ibid.*

So, if the Sale be in the Night, after Sun-setting, and before Sun-rising. 2 *Inst.* 714.

Or, the Treaty for the Sale was begun out of the Market. 2 *Inst.* 713. *Jon.* 164.

So, if there be no Sale: As, where no Consideration is paid; for that is a Gift. 2 *Inst.* 713.

Or the Goods are the Goods of the Buyer himself. *Ibid.*

So a Sale in a Fair, or Market, does not bind the King. *Ibid.*

If a Man pursue his Appeal freshly against a Felon of his Goods, till he be convicted, he shall have Restitution of his Goods, tho' they have been sold in Market Overt. 2 *Inst.* 714.

So, by the *St.* 21 *H.* 8. 11. If a Felon be convicted by the Evidence of the Owner of the stolen Goods, or by his Procurement, upon Indictment. *Ibid.*

So, by the *St. 2 & 3 Pb. & M. 7.* No Sale of an Horse stolen binds the Property, unless it stand, or be ridden an Hour together, between 10 o'Clock and Sun-set in an open Part of the Market, and all Parties to the Bargain come with the Horse to the Book-keeper, and enter the Colour and one Mark at least of the Horse sold, and pay the Toll, if any due, else a Penny. *Vide Post, (F. 1.)*

And by the *St. 31 El. 12.* No Sale of an Horse shall bind, unless the Toll-taker, &c. know the Vendor and enter his Christian, Surname, and Dwelling, or else one, who knows him and is known to the Toll-taker, vouch his Knowledge of Name, Surname, Addition, and Place of Dwelling, which shall be entred, &c. *Vide Post, (F. 1.)*

And this Statute extends to an Horse taken by Wrong, tho' not stolen. *R. Jon. 163. 2 Inst. 717.*

And is only additional to the Common Law, and the *St. 2 & 3 Pb. & M. 7.* All which must be pursued. *2 Inst. 719.*

If the Seller of a stolen Horse in Market Overt be entred in the Toll-book by a false Name, that does not alter the Property. *Per 2 J. Owen 27. 1 Leo. 158. R. cont. Cro. El. 86.*

If a Man plead a Sale in his Shop, he must say, that it was in a Shop where he used his Trade. *R. Mo. 624.*

That it was *in pleno Mercatu.* *Mo. 624.*

And a Custom, that a Sale binds, *modo unus Contrabentium fit liber Homo,* is void; for it tends to a Monopoly. *Mo. 625.*

[There can be no Market-overt for pawning. *Hartop v. Hoare, P. 16 G. 2. Str. 1187. 1 Wilf. 8. 3 Atkyns 44.*]

(F) What Duties are payable.

(F. 1.) Toll.

THE Duties usually paid at a Fair or Market are Toll, Stallage, Picage, *Vide Toll. &c.*

Toll is a reasonable Sum due to the Lord of the Fair or Market, for Things sold there, which are tollable. *2 Inst. 220.*

And it was usually allowed for witnessing of the Sale. *Ibid.*

And, by Common Right, shall be only upon a Sale of live Cattle, not of Victuals, Wares, &c. *R. Mo. 474.*

But, by Custom, it may be due for all Goods brought to the Market. *1 Leo. 218.*

So, by special Custom, Toll may be due for Goods not sold. *Semb. Lut. 1336. But that seems to be for Stallage. 2 Inst. 221. Mo. 835. 2 Rol. 123. l. 37. Vide Post, (F. 2.)*

If an antient Fair or Market returns to the Crown, and the King regrants it, the Toll passes. *Pal. 78.*

The Judges are to determine, whether the Toll be reasonable. *2 Inst. 222.*

The *Mirror* says, that a Halfpenny shall be taken of Goods of 10s. *et sic pro Ratâ,* so that no Toll exceed a Penny. *Ibid.*

And therefore, above a Penny is an unreasonable Toll. *Mo. 474.*

Above a Penny, or two Pence. *Per Popb. Cro. El. 558.*

If the Toll granted be unreasonable, the Grant will be void. *2 Inst. 220. Cro. El. 558.*

So, by the *St. W. 1. 3 Ed. 1. 31.* If the Lord take an outrageous Toll, the King shall take the Franchise; and if it be by a Bailiff, without the Command of the Lord, he shall render to the Plaintiff as much more as he has taken, and shall be imprisoned for forty Days. *Vide Post, (I.)*

An outrageous Toll is any Toll, when there is none due, or the Party is discharged of Toll. *2 Inst. 220.*

Or, if more be exacted than is due. *Ibid.*

And therefore, an Action upon the Case lies against him, that takes an outrageous Toll, viz. of him, who ought to be quit. *Yel.* 13.

So Toll is not incident to a Fair or Market: And therefore, a Grantee shall not have Toll without a special Grant. *2 Inst.* 220, 716. in *Marg.* *R. Cro. El.* 558, 592. *Mo.* 474. *R. Pal.* 77, 86.

[And therefore if it is a new Fair, Custom cannot support it. *Holloway v. Smith*, *M.* 16 G. 2. *Str.* 1171.]

And therefore, if the King grant a Market, &c. *de novo, cum omnibus Libertatibus Pertinentiis*, he shall not have Toll. *R. Pal.* 78.

So, after a Fair, or Market granted, the King cannot grant a Toll, without a *Quid pro quo*. *2 Inst.* 220. *Vide Prærogative*, (D. 18.)

And therefore, it is not sufficient to alledge the Grant of a Market, with all Tolls belonging, but there must be alledged an express Grant, or a Prescription for Toll. *Lut.* 1380.

So the King cannot grant a Toll for Goods not brought to the Market. *Lut.* 1502.

So, regularly, Toll shall not be paid, before the Sale; for it is due from the Buyer, not from the Seller. *2 Inst.* 221. *R. Lut.* 1336.

So the King shall not pay Toll. *2 Inst.* 221.

Nor Tenant in *Antient Demesne*, for Goods for his Tenements or Family. *2 Inst.* 221. *1 Rol.* 321. *B.* 1 *Leo.* 233. *Vide Antient Demesne*, (F. 4.)

Nor, if a Man has a Grant to be discharged of Toll, for Goods for his own Use, bought since his Grant. *2 Inst.* 221.

And he shall be exempted in a Fair or Market of the King. *Ibid.*

Tho' the Grant be for him only, it will be good against the King's Successors. *R. Yel.* 15.

A Grantee to be quit of Toll, may plead his Exemption. *Lut.* 1332.

So, an Inhabitant of a Borough exempted by Charter.

So, an Inhabitant of the Dutchy of *Lancaster*. *Lut.* 1379.

And a Prescription for an Inhabitant is good, being for a Discharge. *R. Lut.* 1380. *Adm.* 2 *Cro.* 152.

But if a Market, where Toll was due by Prescription, comes to the King, and he grants the Market *cum Pertinentiis*, the Grantee shall have the Toll. *Pal.* 78.

[The Owner of a Market cannot distrain for Toll the Goods brought there to be sold, as Damage-feasant, but he has an Action for the Toll. *Wigley v. Peachy*, *T.* 5 & 6 G. 2. *Ld. Raym.* 1589.]

Toll Booth.

By the *St.* 12 & 3 *Pb. & M.* 7. The Owner of every Fair or Market shall appoint one in a special open Place to take the Toll, and keep the same Place from ten in the Morning till Sun-set, on Pain of 40s. who shall take the Toll at the same and no other Time, or Place, and then have before him and enter the Names and Dwellings of all Parties to bargain for any Horse, and the Colour with one special Mark of such Horse, on Pain of 40s. and shall deliver the Book by the next Day to the Owner of the Fair, or Market, who shall make a Note of the Number of the Horses sold, and subscribe his Name to it, on Pain of 40s. on the Defaulter.

By the *St.* 31 *El.* 12. No Book-keeper shall take Toll, or make an Entry, &c. unless he truly know the Seller of the Horse, or his Voucher, their Names and Dwellings, and then shall truly enter the same and the Price of the Horse, &c. on Pain of 5*l.* for every Default.

(F. 2.) Stallage, Picage, &c.

Stallage is a Duty for the Liberty of having Stalls in a Fair or Market. *Pal.* 77. or for removing them from one Place to another. *Pal.* 77.

[Erecting a Stall in a Market is not of common Right, Stall-keeper must compound as he can. *Mayor of Northampton v. Ward*, *M.* 19 G. 2. *Str.* 1238. *Wilson* 107.]

Picage is a Duty for picking Holes in the Lord's Ground for the Posts of the Stalls. *Per Treby, Quo W. 29. Pal. 77.*

And it belongs to the Soil; and therefore, though a Fair granted in *Borough English* Land go to the eldest Son, *Picage* shall be to the youngest Son of the Grantee. *Mo. 474.*

By Custom, a Man shall have Toll for Goods in a Market, sold or not sold; but this seems to be for Stallage. *Vide Ante, (F. 1.)*

So he may take for Stallage the eighth Part of a Bushel of Corn in every four Bushels *in Specie.* 2 *Rol. 123. l. 30, 37. Mo. 835.*

The Owner of an House next to a Fair, or Market, cannot open his Shop for selling in a Market, without Payment of Stallage; for if he takes the Benefit of the Market, he ought to pay the Duties there. *Cont. per Dod. But it was R. per Cur' 2 Rol. 123. l. 30.*

If a Man prescribe for Toll, *viz. pro qualibet Stalla* so much, it is well; for Toll is a general Word. *R. Lut. 1519.*

So, if there be a Prescription for Toll, *viz. inter alia pro qualibet Stalla*, it is well. *Lut. 1519.*

Or, for the Stall and Soil *prope et circa Stallam*; for it shall be ascertained by the Usage. *R. Lut. 1519.*

(G. 1.) Court of Pypowders.

TO every Fair or Market, *Curia Pedis pulverisati, viz.* a Court of Pypowders, is incident. 4 *Inst. 272. Cro. El. 773.*

Or, by Custom, may be held where there is no Fair or Market. 4 *Inst. 272.*

This is a Court of Record, in which the Steward is the Judge. 4 *Inst. 272. Skin. 33.*

And it cannot be held before the Mayor, or other Person, except the Steward, without special Custom. *R. Skin. 33.* But by special Custom it may. 2 *Bul. 23.*

The Jurisdiction shall be, of Contracts in the same Fair or Market, for Goods there bought, or sold. 4 *Inst. 272.*

Or, for Battery or Disturbance there. *D. Cro. El. 774.*

Or, for Words to the Slander of Wares in the Market. 4 *Inst. 272. 10 Co. 73.*

And therefore, if the Proceeding be on a Contract in the Fair, &c. but not for a Thing to be sold there, it will be void. *R. Skin. 33. R. 2 Bul. 21.*

Or, for Slander of another, which does not concern the Fair, or the Goods there. 4 *Inst. 272. R. 10 Co. 73. a. Cro. El. 774.*

Or, out of the Precinct of the Fair or Market. 4 *Inst. 272.*

Or, at a Day before or after; tho' at another Fair or Market. 4 *Inst. 272. 10 Co. 73. Cro. El. 773.*

So, by the *St. 17 Ed. 4. 2. Conf. by the St. 1 R. 3. 6.* The Steward, &c. shall not hold Plea upon Pain of 5*l.* unless the Plaintiff or his Attorney swear, that the Contract, &c. in the Declaration was within the Time and Precinct of the Fair or Market.

And if it be sworn, the Defendant may plead in Abatement, or tender Issue, that it was not; and if no Oath, or it be found for the Defendant, the Plaintiff shall be dismissed, and the Party sent to his Remedy by Common Law.

But such Oath need not appear upon the Record. 4 *Inst. 272.*

So, if it does not appear in Pleading, that the Suit there was for a Matter within the Jurisdiction, it will be void. *R. Skin. 33.*

So an Information there, for a Duty within the Market, tho' it is not void, is erroneous. *R. Cro. El. 530.*

(G. 2.) How the Proceeding shall be.

The Proceeding in a Court of Pypowders shall be by Plaintiff.

And the Cause of Action, Plaintiff, &c. ought to arise, and shall be intirely determined at the same Fair. 4 *Inst. 272.*

And therefore, the Process shall be returnable *de Hora in Horam.* *Ibid.*

But

But Time shall be allowed to the Plaintiff upon a Writ of Inquiry. *R. Cro. El. 774.*

(H) Clerk of the Market.

ANTIENTLY, there was a continual Market at the House of the King's Court, and a Clerk of the Market to inquire, whether the Weights and Measures were according to the Standard. *4 Inst. 273.*

And he had a Court for that Purpose. *Ibid.*

And might make Process to the Sheriffs and Bailiffs, to return Panels before him. *Ibid.*

And all Estreats were to be returned into the *Exchequer*. *Ibid.*

By the *St. 16 R. 2. 3.* He shall have all his Weights and Measures, according to Standard of the *Exchequer*, ready with him, when he makes Assay.

But he could hold no Plea, except what was held in the Time of *Edw. 1. 4 Inst. 273.*

Nor limit the Price of Victuals. *4 Inst. 275.*

Nor break Pots, under the Measure. *Semb. Sav. 57.*

Nor distrain *ex Officio* for a Fine, in not conforming to the Standard. *Semb. 1 Sal. 327.*

By the *St. 27 H. 8. 24.* and *32 H. 8. 20.* The King's Clerk of the Market, and no other, shall use that Office within the Verge, &c. notwithstanding any Grant to any Liberty, &c. while it happens to be within the Verge.

The Office of Clerk of the Market requires, that he set reasonable Prices upon Provisions in the King's Progress, and survey whether they are wholesome, &c. *2 Rusb. 373.*

The Clerk of the Market may take reasonable Fees. *2 Rusb. 375.*

By the *St. W. 1. 3 Ed. 1. 26.* *Nul Minister le Roy preigne Reward pur faire son Office:* Within which Statute is the Clerk of the Market. *2 Inst. 209. 4 Inst. 274.*

By the *St. 13 R. 2. 4.* The King's Clerk of the Market shall do his Office duly, and shall take no Common Fine, on Pain of *5l.* for the first, *10l.* for the second, and *20l.* for the third Offence.

And therefore, if he prescribe to have *2d.* or other Rate for viewing, and examining of Measures, whether they are lawful or not, it is void. *R. 4 Inst. 274.*

Yet, by the *St. 7 H. 7. 3.* (and *11 H. 7. 4.*) He shall have *1d.* for Sealing of every Bushel, and an Halfpenny for a less Measure.

(I) Forfeiture of a Fair, or Market.

BY the *St. North. 2 Ed. 3. 15.* If a Man hold his Fair beyond the Time allowed, he forfeits the Franchise. *2 Rol. 124. l. 30.*

So, if he hold his Market at another Day. *2 Rol. 124. l. 35.*

Or has a Fair to hold two Days, and he holds it three Days. *2 Rol. 124. l. 30.*

But if a Man hold his Market upon the Day allowed, and upon another Day, he shall not forfeit his Market; but shall be punished for the Addition of the Day. *2 Rol. 124. l. 26.*

If a Man take outrageous Toll, he does not forfeit the Market, but the Toll only. The *St. W. 1. 31.* says, *Le Roy pendra le Franchise del Marche en sa main;* but that is, till it be redeemed. *2 Inst. 221. R.* that the Toll only is forfeited. *Pal. 82. Quo W. Treby 37.*

M A R Q U I S.

Vide Dignity.

M A R-

MARRIAGE.

Vide Action upon the Case upon Assumpsit, (B. 8.)—Baron and Feme, (B. 1, &c.—C. 1, &c.—E. 1, &c.)—Chancery, (3 Z. 1, &c.)—Dignity, (C. 6.)—Guardian, (G. 4.—H. 7.)—Prohibition, (G. 15.)

Marriage Brokerage.

Vide Chancery, (3 Z. 8.)

Dissolution of Marriage.

Vide Parliament, (H. 3.)

Divorce.

Vide Abatement, (H. 43.)—Baron and Feme, (C. 1, &c.)—Dower, (A. 1, 2.)—Pleader, (2 Y. 12.)

Forcible Marriage.

Vide Justices, (S. 3.)

King's Marriage.

Vide Parliament, (H. 4.)

Marriage Settlement.

Vide Chancery, (3 Z. 1, &c.)

MARSHAL.

Vide Certificate, (C.)—Courts, (E. 1, &c.—F.)—Imprisonment, (C.)—Officer, (E. 3.)

MARSHALS E A.

Vide Courts, (F.)—Imprisonment, (C.)

MARSHES.

Vide Wales, (A. 3.)

MARTIAL LAW.

Vide Parliament, (H. 23.)—Prærogative, (C. 1, &c.)—War, (B. 6.)

MAS S.

Vide Justices of Peace, (B. 14.)

M A Y O R.

Vide Courts, (O. 3.)—*Dismes*, (M. 6, 7.)—*Franchises*, (F. 22.)—*London*, (C.)—*Statute Staple*, (D. 1.)

M E A S U R E S.

Vide Justices of Peace, (B. 90, &c.)—*Leet*, (L. 6, &c.)

M E D I E T A S L I N G U Æ.

Vide Alien, (C. 8.)

M E E R S.

Vide Chase, (G. 1.)

M E L I U S I N Q U I R E N D U M.

Vide Officer, (G. 12.—K. 12.)—*Prærogative*, (D. 67, &c.)

M E R C H A N T.

(A) Merchant; Who shall be.

TH E R E are four Species of Merchants:—Merchant-Adventurers, Merchants-Dormant, Travellers, and Merchants-Resident. *2 Brownl. 99.* *Vide Trade*, 1 (A. 1, &c.)

And, generally, every one shall be a Merchant, who trafficks by way of Buying and Selling, or Bartering of Goods or any Merchandize, within the Realm, or in Foreign Parts. *Sal. 445.*

So, if a Man draw a Bill of Exchange, he will be a Merchant for that Purpose. *Vide Post*, (F. 4.)

(B) Factor.

A F A C T O R is authorized by a Letter of the Merchant, with a Salary, or an Allowance for his Care. *Ma. 81.*

And the same Person may be Factor for many different Merchants. *Ibid.*

Every Factor must pursue his Commission strictly. *Ibid.*

And by his General Commission has Authority to sell upon Credit. *2 Ca. Cb. 57.*

[A Factor has Power to sell, and thereby bind his Principal, but he cannot bind or affect the Property of the Goods, by pledging them as a Security for his own Debt, tho' there is a Bill of Parcels, and a Receipt. *Paterfon, v. Tash*, H. 16 G. 2. *Str. 1178.*]

So, if a Loss happens to the Merchant, the Factor shall be excused, if he does not act contrary to his Commission. *Ma. 81.*

But if a Factor does not pursue his Commission, he shall lose his Factorage, and shall answer to the Merchant for his Damage. *Ibid.*

And therefore, if a Factor gives more, or buys less in Quantity or Quality, than his Commission requires, the Merchant may disclaim, and the Factor shall take the Goods bought to himself. *Ma. 82.*

[If *A. Merchant* in *London* orders *B. Merchant* abroad, to buy him Goods at a Price limited, *B.* exceeds the Price, and sends the Goods, *A.* refuses the Contract, but disposes of the Goods as his own, and at a Risk; he shall not be deemed the Factor of *B.* but to have accepted, notwithstanding what he said; and shall account with *B.* according to the Price *B.* paid. *Cornwall v. Wilson, T. 1750. 1 Vesey 509.*]

So, if he ships them for a different Port or Place. *Ma. 82.*

So, if he sells for a less Price than was directed, without sufficient Reason, he shall make Satisfaction. *Ibid.*

If he sells without giving Advice, to make a Profit to himself. *Ibid.*

Or, sells to *A.* who was insolvent, without a special Direction, or plain Ignorance. *Ma. 83.*

If a Factor sells to *A.* for his Principal, and before Payment sells for himself, and takes Money for himself, he shall answer so much for the Debt to his Principal; for he cannot receive his own Debt to the Prejudice of the Debt of his Master. *Ma. 82.*

[Where the Custom of the Trade is, that the Factor sells Goods at his own Risk, for which he has an additional Allowance; no Credit is given as between Owner and Buyer, and the Buyer is not answerable to the Owner, tho' he gives him Notice before Payment not to pay to the Factor, who has failed. By the Jury, against the Direction of *Lee C. J.* and by a special Jury on a new Trial, still against *C. J.*'s Direction. *Scrimshire v. Alderton, H. 16 G. 2. Str. 1182.*]

If he makes a false Entry at the Custom-house, whereby the Goods are forfeited. *Adm. Ca. Ch. 25.*

And therefore, if a Factor in a foreign Kingdom do not pay the Customs, he shall have them to himself, and shall not be accountable to his Principal. *R. Ca. Ch. 25. R. Ca. Ch. 76.*

Otherwise, if he does not pay the Customs to the King. *R. Ca. Ch. 30.*

If a Factor takes Security by an Obligation of *A.* upon a Sale of Goods, without Authority, in his own Name, he shall answer, if *A.* fails. *Semb. 2 Ca. Ch. 57.*

[If a Merchant directs his Factor or Correspondent to insure, and he charges him with it as if done, and Loss happens, he shall be charged as Insurer; but if Factor employs an Agent, this Equity will not extend to that Agent. *Tickle v. Short, H. 1750. 2 Vesey 239.*]

[A Factor has a lien on Goods consigned to him, not only for incident Charges, but as an Item of mutual Account for the general Balance due to him, so long as he retains the Possession; if he parts with Possession, he parts with his Lien. *R. per Hardwicke C. Krutzer v. Wilcox, H. 1754. Gardiner v. Coleman, T. 1755. cited by Ld. Mansfield. Godin v. London Assurance Company, H. 31 G. 2. 1 B. M. 489.*]

[A Dyer (not acting as a Factor but merely as a Manufacturer) has no Lien on Goods delivered to him to dye for other Debts only for the dying these Goods. *Green v. Farmer, P. 8 G. 3. 4 B. M. 2214.*]

[A Packer being in the Nature of a Factor, has. *Ibid.*

[Joint Factors are answerable and accountable for the Whole on an Action of Account. *Godfrey v. Saunders, P. 10 G. 3. 3 Wils. 73.*]

[If a Factor sells Goods as his own tho' no Delivery (if the Goods are at Sea) the Vendee shall hold, if Fraud appears between Factor and Vendee, otherwise. *Wright v. Campbell, P. 7 G. 3. 4 B. M. 2046.*]

(C) Broker.

BROKERS are Persons employed among Merchants to make Contracts between them, and fix the Exchange for Payment of Wares sold or bought. *Ma. 143.*

And

And by Usage in *London*, Freemen of the City selected out of the Companies, of which they are free, and presented by six at least approved Members of their Company to the Mayor and Aldermen, and by the Court of Aldermen allowed, have been admitted and sworn to be Brokers in *London*. *Vide the St. 1 Jac. 21.*

S. 1. * [One who for Brokage and Hire negotiates and concludes Bargains for Stocks is a Broker within 6 *Ann. c. 16. Janssen v. Green, T. 7 G. 3. 4 B. M. 2103.*] [*Vide also the St. 6 Ann. 16.]

But Pawn-brokers, who buy and sell Goods upon Pawn, use an unlawful Trade. *Kels. 50. †*

And by the *St. 1. (or 2.) Jac. 21. S. 5.* A Sale or Pawn to them of Goods purloined, or stolen at any Place within the City or Liberties of *London*, or in *Westminster* or *Southwark*, or within two Miles of *London*, shall not alter the Property of the Goods so purloined or stolen. † [Vide the St. 30 Geo. 2. 24.]

And an Action lies against them by the Owner for such Goods, tho' the Felon be not prosecuted. *Kels. 50. †*

And by the *same Statute, S. 7.* If the Owner require the Pawn-broker to shew him such Goods, and tell how he came by them, or how he hath disposed of them, and he refuse to disclose them, he forfeits double the Value. † [Vide the St. 30 Geo. 2. 24.]

(D) *Lex Mercatoria.*

There shall be no Survivorship.

LEX Mercatoria, or Law-Merchant, is Part of the Law of *England. Co. L. 11. b. 2 Rol. 114.*

[And therefore it cannot be proved by Witness, *Pellans v. Van Mierop, P. 5 G. 3. 3 B. M. 1663.*]

Per Legem Mercatoriam, the Merchandizes, Debts, and Duties of Joint-Merchants do not survive, but go to the Executor of him who dies; for *Jus accrescendi inter Mercatores pro Beneficio Commercii Locum non habet. Co. L. 182. a.*

And this extends to all Merchants and Traders, tho' they do not go beyond Sea. *2 Brownl. 99.*

And therefore, the Executor of the Deceased shall join with the surviving Merchant, for Goods carried away in the Life-time of the Testator. *Lut. 1493. Dub. whether necessary. Sho. 189. Cont. for the Remedy survives, tho' the Duty does not survive. Sal. 444.*

[If Judgment is obtained against a surviving Partner for a Partnership Debt, it is still a Partnership Debt. *Jacomb v. Harwood, P. 1751. 2 Vezey 265.*]

And if a Joint-Factor dies, an Account lies against the Executor of the Deceased, and the Survivor. *Ca. Ch. 127.*

Yet the Survivor of Joint-Factors may be charged solely, for Goods sold by him and his Partner. *R. Ca. Ch. 127.*

So, if a Joint-Merchant die, the Action for Money due to them survives; for the Survivor and the Executor of the Deceased cannot join. *Sal. 444.*

[Articles of Partnership in Trade do not subsist for the Benefit of Executors (to intitle them to continue in the Partnership) unless specially provided. *Pierce v. Chamberlain, M. 1750. 2 Vezey 33.*]

[In commercial Cases among Merchants, Want of Consideration is no Objection. The *nudum pactum* does not exist, in the Law of Merchants. *Pellans v. Van Mierop, P. 5 G. 3. 3 B. M. 1663.*]

(E. 1.) *Contracts of Merchants.*

CONTRACTS of Merchants, are Regal, Notarial, or Verbal. *Ma. 89.*
The Regal are, where the King by Commissioners contracts with any particular Merchants for Provisions, Apparel, &c. of the Army, &c. *Ibid.*

Notarial Contracts are, where an Entry of the Contract is made by a Publick Notary. *Ma. 90.*

(E. 2.) Contract by Charterparty.

(E. 2.)
How made.

Contract by Charterparty is, when there are Agreements or Covenants by Charter, between one or more Merchants, and the Master of a Ship, for the Freight of his Ship, and the safe Carriage of the Merchandizes. *Ma. 97.*
No Ship ought to be freighted without a Charterparty. *Ibid.*

(E. 3.)
What the
Merchant
ought to do.
Freight of
the Ship.

The Merchant ought to import his Goods in the Ship, and pay the Freight according to the Agreements by the Charterparty. *Ma. 98, 99.*

The usual Freight is so much *per Ton*. *Ma. 99.*

Or, so much for the Voyage outward, and so much inward, or so much for the Whole. *Ma. 98, 100.*

If no Sum is expressed for the Freight, so much ought to be paid, as is usual in such Voyage. *Ma. 100.*

So, if the Freight be agreed for such Goods, and the Merchant puts more in the Ship, the Master shall take as much Freight as he pleases. *Ma. 99.*

If the Freight be agreed for 3*l.* *per Ton*, and afterwards there is an Embargo upon the Ship for six Weeks, the Master may make a new Agreement with the Merchant's Factor for 6*l.* a Ton, without discovering the former Agreement. *R. 2 Ver. 242.*

If the Freight be in Gross, *viz.* 600*l.* for a Ship of 200 Tons, it shall be paid, tho' the Ship has not so many Tons. *Ma. 100.*

If the Ship be freighted, so much outward and so much inward, the outward Freight shall be paid, tho' the Ship perish in her Return. *Ma. 98.*

Or, return without Lading, by the Default of the Merchant or his Factor, the Whole shall be paid. *Semb. 2 Ca. Ch. 75. 2 Ver. 212.*

So, tho' by the Letter of the Charterparty, the Freight cannot be recovered by Law, yet, if by the Intent it ought to be paid, it shall be recovered in Equity. *2 Ver. 210.*

But if the Ship perish, the whole Freight from the last Place or Time of Payment will be lost. *1 Sid. 236.*

So, if there be a Default in the Master, he shall lose his Freight: As if the Master sail out of Port in a Tempest, &c. *Ma. 98, 102. Vide Post, (E. 6, 9.)*

Or, without a Pilot, or Necessaries, or contrary to the Terms required by the Charterparty. *Ma. 98, 102.*

So, if the Ship returns without Lading, where he does not stay for it the whole Time agreed, and makes a Protest against the Factor, &c. *Ma. 98.*

Tho' there was Danger of being taken by the Enemy, if he had stayed. *Ma. 98.*

And if no Freight was payable till the Return, he shall lose the Freight outward as well as inward. *Ibid.*

The Goods carried, generally, are a Security for the Freight.

And the Master need not deliver them, without Payment.

[If a freighted Ship becomes disabled without the Master's Fault, he has his Option to refit (if possible in convenient Time) or to hire another Ship to carry the Goods; if the Merchant will not agree to this, the Master is intitled to the full Freight of the whole Voyage. *Lutwidge v. Grey, in the House of Lords 1733, cited in Luke v. Lyde, M. 33 G. 2. 2 B. M. 882.*]

[The Master shall have his Freight, tho' the Goods are spoiled, if the Merchant takes them. *Ibid.*]

[The Merchant may abandon *all*, tho' *all* are not lost; but he cannot abandon some, and take some; if he abandons *all*, he is excused Freight. *Ibid.*]

[If the Ship is disabled or taken, when Part of the Voyage is performed, without Fault of the Master, he shall be paid a rateable Proportion of the Freight. *Ibid.*]

[A Ship is freighted from *Newfoundland* to *Lisbon*, when seventeen Days at Sea, and within four Days of *Lisbon*, is taken, retaken, brought to *Biddiford*, the Merchant has his Goods, pays half Salvage, sends them to *Bilboa*, and sells them

them at Loss; the Master is intitled to seventeen twenty-one Parts of the Freight of half the Goods. *Ibid.*]

Bottommarie, Bottomage, or Bottomree, is so called, where the Master takes up Money, by way of Loan, for the Use of the Ship, and pledges the Bottom or Keel of the Ship for Security of Payment. *Lat. 252.* (E. 4.) Contract of Bottomree.

And such Hypothecation of the Ship binds the Owners. *Lat. 252. Vide Admiralty, (E. 10, 11.)*

So, if a Man makes a Loan of Money to be paid upon the Return of the Ship, and takes a Security by Obligation, &c. such Contract is called a *Bottomree* Contract. *Ma. 122.*

And because the Lender loses his Money, if the Ship does not return from the Voyage, a great Interest or *Premium* is usually taken for it, and will not be usurious. *Vide Usury, (B.)*

But if a Contract be made, by Colour of *Bottomree*, to evade the Statute of Usury, it will be usurious.

So, if the Master or Merchant takes a Loan upon a *Bottomree* Contract, and deviates from the Voyage agreed, he shall pay the Money, tho' the Ship never returns, but is lost before the Time of Payment agreed upon; for the Deviation was the Default of the Master. *R. Skin. 152.*

The Master has the Power over, and Charge of the Ship. *Ma. 102.*

And therefore, ought to take Care that the Ship and Tackle be sufficient. *Ma. 103.* (E. 5.) What the Master ought to do.

And he shall answer for the Damage which happens, if he pursues his Voyage when the Overloop of the Ship is untight, or Pump faulty. *Ibid.* Provide the Ship.

So he shall answer for Damage by bad Hooks, Ropes, Blocks, &c. whereof he has Notice. *Ibid.*

So the Master ought to pursue his Voyage with due Care according to the Instructions: And therefore, shall answer for Damage which happens, if he hoist Sail without a good Pilot. *Ma. 102.* (E. 6.) Perform his Voyage.

Or, in tempestuous Weather, without the Advice of his Company. *Ma. 102. Vide Ante, (E. 3.)—Post, (E. 9.)*

If a Contract be not by Charterparty, but only by Earnest given, if the Merchant recedes from the Contract, he loses his Earnest only. *Ma. 98.* (E. 7.) The Contract. How dissolved.

If the Master recedes, he shall lose double the Earnest. *Ibid.*

[In a Charter-party, if *A.* covenants to proceed to *W.* to stay forty Days, and load with the Goods *B.*'s Agents tender to be laden; and in Consideration *B.* agrees to pay Freight at 4*l.* 10*s.* per Ton; Proviso if the Ship does not arrive on 1st. *March*, then to be at *B.*'s Option to load at that Freight, or the current Freight, or not at all; and *A.* does not go to *W.* he is liable to the Penalty. *Shubrick v. Salmond, H. 5 G. 3. 3 B. M. 1637.*]

If a Contract by Charterparty be broken, Covenant lies upon it, by the one Party or the other. 3 *Lev. 41. Lev. Ent. 37.* (E. 8.) Remedy for Non-performance.

[The Owner of the Ship is liable to the Freighter, for the Default of the Master, though the Freight was to go to the Master, either by special Agreement of the Owner, or by the Custom of Trade, and though it were in a Trade unlawful in the foreign Country, but lawful in England. *Boucher v. Lawson, H. 8 G. 2. and H. 9 G. 2. B. R. H. 85 & 194.*]

[But it must be charged on the Custom of the Realm, as in a Ship usually carrying for Hire, or employed that Voyage to carry for Hire; or on the personal Undertaking of the Owner; and in a special Verdict this must be specially found; on a general Verdict, it is presumed. *Ibid.*]

[*A.* Owner of a Ship lets it to *B.* for a Voyage for a Sum certain, and *B.* to have the Benefit of carrying Goods, and *A.* covenants for the Condition of the Ship, and the Behaviour of the Master, *C.* sends Gold, and has Bills of Lading signed

signed by the Master, *A.* is liable and not *B.* *Parish v. Crawford, H. 19 G. 2. Str. 1251.*]

[The Plaintiff must sue for the whole Penalty at Law, but if the Defendant thereupon applies to Equity for Relief, on his paying Principal, Interest and Costs, the Charter-party shall be delivered, and Satisfaction acknowledged. *Forward v. Duffield, T. 1747. 5 Atkyns 555.*]

[If a Factor hires a Ship, and executes a Charter-party, by which the Goods to be put on Board are made liable to the Master; and some Merchants load the Ship, and agree with the Factor at 9 *h.* per Ton for the Carriage, and the Factor becomes Bankrupt; the Merchants are not liable to the Owner's Demand, nor their Goods, but they are liable to pay the Factor the Freight of the Cargo, and as the Master has a specific Lien on the Goods, he must be paid before the Assignees of the Bankrupt take any Thing. *Paul v. Birch, T. 1743. 2 Atkyns 621.*]

As to Contract between Master and Owners,

Vide Navigation, (I. 4.)

What Contract is good by the Law-Marine,

Vide Admiralty, (E. 10, 11.)

(E. 9.) Contract by Policy of Assurance.

A Policy of Assurance is, when a Merchant gives a Consideration in Money to Others, to assure his Goods, Ship, or other Thing by him adventured, upon such Terms, as may be agreed between the Merchant and Assurers. *Vide St. 43 El. 12.*

This Usage was introduced by the Emperor *Claudius Caesar*, and recorded amongst the Laws of *Oleron*, and afterwards used amongst Merchants in *England*, and since in other Kingdoms. *Ma. 105.*

And by the *St. 43 El. 12.* it appears, that this Usage is Common, when a grand Adventure is made in Parts remote, whereby if the Ship perishes, the Loss is divided amongst many.

And upon this Statute the King may make an Office for Entry of Policies. *R. Hard. 351.*

By the Instrument, or Policy of Assurance, in Consideration of a Premium of so much *per Cent.* to be paid by the Merchant, the Assurers assure such a Ship, her Tackle and Keel, &c. from *London* to such a Port; and if the Ship, &c. perish, every Subscriber pays the Sum by him subscribed for Recompence of the Loss. *2 Sand. 200.*

[If a Ship is insured *at and from* a Place, whilst she is there preparing for the Voyage, the Insurer is liable; but if the Voyage is laid aside, and the Ship lies there several Years, with the Owner's Privity, the Insurer is not liable. *Chitty v. Selwin, T. 1742. 2 Atkyns 359.*]

So an Assurance may be made for a Ship, &c. in her Voyage to such a Country, or Port, and her Return to *London.* *2 Sand. 200.*

Or, for a Voyage to such a Country, and to trade there, and return to such a Port. *Ibid.*

[If Ship and Freight are insured, and the Ship is lost whilst careening, before the Cargo is put on Board, the Insurer is liable for the Ship only, and not for the Freight she might have earned, if not lost. *Tonge v. Watts, H. 19 G. 2. Str. 1251.*]

So it may be for the Goods and Merchandizes laden in such a Ship. *Ma. 106.*

Or, for such and such Goods in particular. *Ibid.*

Or, for Goods laden, or to be laden in any Ship at such a Port, or from such a Country to *London.* *Skin. 327.*

So, for Money; tho' he has no Interest in the Ship or Cargo, except what he lends upon *Bottomree* Bond. *Cont. 2 Ver. 269. R. acc. 2 Ver. 717.*

[If a Man who has lent Money on *Bottomree* or *Respondentia*, insures on Goods, he cannot recover; for *Bottomree* or *Respondentia* must be specified in the Policy. *Glover v. Black, T. 3 G. 3. 3 B. M. 1394.*]

So an Assurance may be made upon Ship and Goods, *lost or not lost. 2 Sand. 200. (Vide Ma. 107.)*

For the Goods of *A.* without Account; if proved that *A.* had Goods there, tho' the Particulars are not proved. *Skin. 405.*

[On Interest or no Interest insured, a Recapture, after being in an Enemy's Port, avails not Insurer. *Dean v. Dicker, H. 19 G. 2. Str. 1250.*]

So it may be made for the Life of any Person. *Ma. 107.*

[By *Stat. 14 G. 3. c. 48.* No Insurance shall be made on Lives, or other Event, but by Person having Interest therein whose Name must be inserted; and he can recover no more than his Interest amounts to. This extends not to *bona fide* Insurances on Ships or Goods.]

[On Insurances of Houses against Fire, it is necessary the Party injured should have an Interest in the House, at the Time the Policy is made out, and at the Time the Fire happens; therefore after the Lease of a House is expired, and after the Fire happens, the Insured's assigning the Policy does not oblige the Insurers to make good the Loss to the Landlord, the Assignee. *Sadlers Company v. Badcock, P. 1743. 2 Atkyns 554.*]

[Policies of Assurance against Fire are not assignable in their Nature, nor intended to be assigned from one Person to another, without the Consent of the Office. *Ibid.*]

[Policy of Assurance against Fire, with Proviso not to be liable if burnt by Invasion by foreign Enemies, or any military or usurped Power whatsoever; a Mob rises on Account of the Dearth of Provisions, the Proclamation is read, Mob disperses, another arises and burns the House; this is not an usurped Power within the Proviso. *Drinkwater v. London Assurance, M. 8 G. 3. 2 Wils. 363.*]

[A warlike Fort may not be insured by the Governor; but a nominal Fort, really a Factory, and only defensible against black Natives, may be insured by a Governor, who is a Merchant, and not a Military-man. *Carter v. Boehm, P. 6 G. 3. 3 B. M. 1905.*]

[Such Insurance is good, tho' the Insured does not disclose such Conditions of the Place as do not affect the Risque insured against; nor his Speculations, that the Enemy might make them a Visit, being unable to act elsewhere; nor that the Enemy designed to attack them the Year before. *Ibid.*]

So a Policy may be explained by a *Parol* Agreement; As, that it shall not take Effect till the Ship arrive at such a Place, tho' the Policy be from London. *Sal. 444, 5. Cont. Skin. 53.*

That it shall be for the Ship *A.* where *B.* is Commander; tho' the Policy by Mistake was for the Ship *B.* where *D.* was Commander. *Per Holt Sal. 444.*

So, if the Policy has a Blank for the Time of the Insurance, it shall be helped by a Verdict. *Semb. F.g. 275.*

If the Ship or Goods insured be lost in Whole or in Part, every Assurer shall make Recompence according to his Subscription, or *pro Rata* in Proportion thereto. *Ma. 105, 108, 118.*

[The Insurer, after Satisfaction made to the Assured, stands in his Place as to the Goods, Salvage, and Restitution, and is intitled to a Share of Prizes taken by virtue of Letters of Reprisal. *Randal v. Cockran, T. 1748. 1 Vezey 98.*]

[If a Ship insured is taken, retaken, and no Person appearing to give Security, condemned and sold, the Moiety paid the Recaptors, and the other Moiety remains with the Officers of the Court, and the Insured recovers on the Policy. Chancery will not restrain him from proceeding for the Whole, if he offers to relinquish the Salvage to the Insurer. *Pringle v. Hartley, M. 1744. 3 Atkyns 195.*]

[If a Privateer is insured to cruise for three Months, and is taken by the Enemy, retaken before she is *infra prædia hostis*, carried into a neutral Port, and

sentenced to be restored to the Owners on paying Salvage, yet it is a total Loss to the Insured. *Pond v. King*, H. 21 G. 2. 1 Willf. 191.]

[If the Salvage falls short of the Freight, it is to be considered as a total Loss. *Boyfield v. Brown*, M. 10 G. 2. Str. 1065.]

[The Expenses of Salvage may be given in Evidence, though the only special Damage laid is, that the Goods were spoiled by the Ship's sinking, for it is within the Cause of Action. *Cary v. King*, T. 9 G. 2. B. R. H. 304.]

[If a Ship is taken, retaken, and arrived in England before the Insured offers to abandon, and is afterwards brought to the Port of Delivery, and has sustained no Damage from the Capture, he cannot recover for a total but only an average Loss. *Hamilton v. Mendez*, T. 1 G. 3. 2 B. M. 1198.]

[In Action on the Case, on Policy of Insurance, tho' the Declaration is for a total Loss, and Damages laid for such, and Plaintiff only proves an average Loss, and does not attempt to prove a total Loss, yet he may recover as for a partial Loss. *Gardiner v. Croasdale*, H. 33 G. 2. 2 B. M. 904.]

[The Duty arises on the Ship's Arrival and landing her Cargo, the Insured has then a Right to Satisfaction, to be paid such Proportion of the prime Cost, or Value in the Policy, as corresponds with the Proportion of the Diminution in Value occasioned by the Damage; and the Adjustment must be according to the Value at that Time, and not depend on Speculations or future Events.]

[Thus A. insures Sugars to *Hamburg*, at 30 l. per Hoghead, it is damaged, and therefore, and therefore only, must be immediately sold; the Value of Sugar undamaged is then 23 l. of this damaged Sugar 20 l. A. shall pay the same Proportion of 30 l. as 3 l. (the Difference between 23 l. and 20 l.) is of 23 l. that is, three twenty-thirds of 30 l. *Lewis v. Rucker*, P. 1 G. 3. 2 B. M. 1167.]

[Average signifies a Contribution to a general Loss: It also signifies a particular partial Loss. *Wilson v. Smith*, T. 4 G. 3. 3 B. M. 1550.]

[If Corn is insured *free from Average, unless general, or the Ship be stranded*, and the Ship is obliged in a Storm to cut away and leave her Cable and Anchor, and runs into a Port to refit, then proceeds to the Port of Delivery, and delivers the Corn which is damaged by the Storm, the Insured cannot recover. *Ibid.*]

But a Fraud in him that makes the Assurance will excuse the Assurer: As, if the Owner of a decayed Ship after Assurance destroy the Ship. *Mal* 107.

Or, if the Ship perish by his Default. *Ibid.*

Or, the Default of the Pilot. *Mal* 109.

Or, the Ship be insured as the Ship of an Ally, when it was the Ship of an Enemy. *Skin*. 327.

So, if a Man knows the Ship, &c. to be lost before Assurance. *Sbo*. 324.

Tho' the Assurance was for the Ship, *lost or not lost*. *Ibid.*

[If a material Circumstance (as that Advice was come that the Ship was leaky, and suddenly disappeared) is concealed from the Insurer, the Policy is void, though the Ship is not lost but taken by the Enemy. *Seaman v. Ponereau*, H. 16 G. 2. Str. 1183.]

So, if the Words are general, without saying, *lost or not lost*; if the Ship was lost before Assurance, tho' the Assured did not know it. *Sbo*. 324.

[An Agreement between the Insured and the first Under-writer, "that he shall not be bound by his Signing the Policy," renders the Policy fraudulent. *Wilson v. Duckett*, M. 3 G. 3. 3 B. M. 1361.]

[A fraudulent Policy shall be delivered up, and the Premium returned, deducting Costs. *Ibid.*]

So, if the Voyage be changed, or a Deviation made by the Default of the Assured. *Sbo*. 324.

Or, of the Master. *Sbo*. 325.

[If a Ship is insured from one Port to another, but takes in Goods to be delivered at a Third, and is lost before she comes to the dividing Point of the two Voyages, the Insurer is liable, for the Intention to deviate does not discharge him. *Foster v. Wilmer*, H. 19 G. 2. Str. 1249.]

Or the Goods are transferred to another Ship. *Sbo*. 325.

[If a Man insures Interest or no Interest on any Ship he shall come in from *V.* to *L.* beginning from his embarking, and the Money to be paid, though his Person escape, or the Ship be retaken, and he embarks on *S.* which springing Leak, he goes on board *F.* he arrives in *L.* but Ship *S.* is taken, the Insurer is liable, and if *S.* had got safe, and *F.* been lost, he would not have been liable. *Dick v. Barrel, H. 19 G. 2. Str. 1248.*]

So the Assurer shall not be charged for Goods, &c. imbeziled, or stolen by any of the Mariners. *Ma. 109.*

Or taken feloniously out of the Ship. *Ibid.*

Tho' the Assurance be against Pirates, Thieves, &c. for it shall be intended of publick Thieves, as Enemies, Pirates, &c. *Ibid.*

So, by the Custom of Merchants, if an Insurance be upon Goods in a Ship to such a certain Value, every Insurer subscribing, after the whole Value subscribed, shall return his *Premium*, and shall not be charged for the Goods lost. *R. Sbo. 133.*

Tho' the first Subscribers prove insolvent. *Sbo. 133.*

[*Double Insurance* is where the same Man is to receive two Sums instead of one, or the same Sums twice over for the same Loss, by reason of his having made two Insurances on the same Goods or Ships; but every Case where there are two Insurances is not a *double Insurance*. *Godin v. London Assurance Company, H. 31 G. 2. 1 B. M. 489.*]

[*A.* at *Saint Petersburg* is indebted to *B.* in *London*, who sends a Ship for Goods, makes Insurances; *A.* sends Goods, but not Bill of Lading, directs Insurances to be made, which are done accordingly; *A.* indorses the Bills of Lading to *C.* of *Moscow*, who orders Insurance for the Whole, which is done with *D.* the Whole is lost; *C.* shall recover the whole Sum of *D.* and if *C.* is any ways intitled under the Insurances made by *A.* or *B.* *D.* shall stand in his Place. This is still stronger, if *D.* was apprized that there might be another Insurance. *Ibid.*]

So the Assurer shall not be charged, if the Assured does not perform the Terms on his Part: As, if a Policy has the Words, *warranted to depart with Convoy*; for that imports that the Assured shall take Convoy for his Security, and if he does not, the Assurer shall not be charged. *R. 3 Lev. 320. 4 Mod. 60. Sbo. 326.*

And it is not sufficient, that he took Convoy, for his Departure, if he did not take it for the whole Voyage. *R. 3 Lev. 320. 4 Mod. 60. Sal. 443.*

[Coming out of Harbour on a Signal and Orders from a Man of War, and sailing in the Fleet for some Time, and there taken, though unable to get sailing Orders from the Man of War, is sailing with Convoy, *Victorin v. Cleeve, H. 19 G. 2. Str. 1250.*]

If the Ship make a Deviation in her Voyage. *4 Mod. 60.*

If the Assured act contrary to his Agreement. *R. 4 Mod. 60.*

If there are mutual Covenants, and the one is the Cause, whereby the other cannot be performed. *Sbo. 324.*

But if the Convoy be separated by Tempest, and the Ship in Search of the Convoy, be taken, it is not such a Default that the Assured shall lose his Insurance. *R. 3 Lev. 321. 4 Mod. 60. Sbo. 326.*

So, if a Convoy be taken at the usual Place, viz. at the *Downs*, though he depart without it from *London*. *Per 3 J. Holt cont. Sal. 443.*

[On Insurance of Ship warranted to depart with Convoy, she may go to the Place appointed for the general Convoy for that Trade (as from the *Downs* to *Spithead*) at the Hazard of the Insurers. *Gordon v. Morley. Campbell v. Bordieu, H. 20 G. 2. Str. 1265.*]

[If a Ship is insured from *London* to *Halifax*, warranted to depart with Convoy from *Portsmouth*, and before she arrives at *Portsmouth* the Convoy is gone, (so that the Insurer runs no Risque for the remaining Part of the Voyage) he shall return Part of the Premium. *Stevenson v. Snow, M. 2 G. 3. 3 B. M. 1237.*]

So, if the Damage happens before any Deviation, tho' afterwards the Ship deviates, the Insurance shall not be lost. *R. Sal. 444.*

So

So a Voyage in the usual Course, tho' it be not direct, will not be a Deviation. *R. Sal. 445.*

[If a Policy of Insurance differs from the *Label*, i. e. the Minute of the Agreement entered in a Book, and signed by the Insurer and the Insured, it shall be made agreeable to it. *Motteux v. London Assurance Company, M. 1739. 1 Atkyns 545.*]

[If a Ship at *Bengal* is insured in *London* from her Arrival at *Fort Saint George*, it means her first Arrival there in her homeward bound Voyage. *Ibid.*]

[If a Ship so insured, being arrived at *Fort Saint George* is found leaky, and is directed by the Governor to go to *Bengal* to refit, and is lost in returning from *Bengal*, it is a Loss during the Voyage, and according to the Adventure intended to be insured. *Ibid.*]

[It is usual, prudent, and for the Benefit of all concerned, to take out the Furniture, Tackle, &c. of a Ship, and put them in a Warehouse on Land at a certain Place, (as on the Sand-banks in the River of *Canton*) while she refits, and if they are there burnt, the Insurers are liable. *Pelly v. Royal-Exchange Assurance, P. 30 G. 2. 1 B. M. 341.*]

[If a Ship insured to the Port of *London*, and till there moored twenty-four Hours in good Safety, arrives the 8th, is that Day served with Order to return to perform fourteen Days Quarentine, the Crew desert, Captain petitions to be excused, Petition adjourned to 28th, and then ordered back; she returns, performs the Quarantine, applies to air the Goods, and before her Return is burnt, the Insurers are liable. *Waples v. Eames, M. 19 G. 2. Str. 1243.*]

So, if the Assurance be, till the Ship be discharged from the Voyage, she is not discharged by Arrival at the Port, till the Goods are unladen. *R. Skin. 243.*

[If Goods are lost after the Owner has taken them out of the Ship into a Lighter, and before they reach Land, it is no Charge on the Insurers; otherwise, if they had been sent by the Ship's Boat. *Sparrow v. Carruthers, T. 18 G. 2. Str. 1236.*]

But the usual Perils, expressed in Policies of Assurance, against which the Assurer insures, are

(1) *Perils of the Sea. Ma. 108.*

And therefore, the Assurer undertakes to assure against all Damages by Tempest or Shipwreck. *2 Rol. 248. 1. 35. D. Sal. 443. Sho. 323.*

If he assure against Perils by Distress of Weather, the Assurer shall pay, if the Ship be lost in the Sea, not if it be lost by Capture of an Enemy. *R. Skin. 3.*

So, against all Dangers upon the Sea by Pirates, or Men of War. *R. 2 Rol. 248. 1. 40. 4 Mod. 60. Sho. 322.*

So, against Seizure by the Government. *Dub. Sal. 444.*

[If a Ship is insured except as to Captures and Seizures, and four Years afterwards has never been heard of, it shall be deemed sufficient Evidence that she foundered, and Plaintiff shall recover against Insurers. *Green v. Brown, M. 17 G. 2. Str. 1199.*]

(2) The usual Hazards expressed in Policies are, *Men of War, Enemies, Pirates, Rovers, Thieves. Ma. 109.*

[As between Insured and Insurer, a Ship is lost by the Capture, and the Insurer must indemnify the Insured as to the Loss actually sustained; and he shall stand in the Place of the Insured, in Case of Recapture or Abandonment. *Goss v. Withers, M. 32 G. 2. 2 B. M. 683.*]

[Generally, but not universally, on a Capture, the Insured may demand as for a total Loss, and abandon. *Ibid.*]

[So, on an Arrest or Embargo by a Prince not an Enemy. *Ibid.*]

[But where the Capture is but small Hindrance, as sudden Escape, or immediate Ransom, it is only an average Loss. *Ibid.*]

[The Insured in no Case is obliged to abandon. *Ibid.*]

[He cannot turn what in its Nature is an average Loss, into total Loss, by abandoning. *Ibid.*]

A Ship

[A Ship insured is taken, the Hands, except two, taken out and sent to France, she remains eight Days in the Enemy's Hands, is retaken, brought to England; she could not proceed without coming to refit, immediate Notice to Insurers, with Offer to abandon. This is total Loss. *Goss v. Withers*, M. 32 G. 2. 2 B. M. 683.]

So, against *Barratry of the Master himself*. *Per Holt Sho.* 326.

And every Fraud of the Master will be Barratry: As, if he run away with the Ship or embezel the Goods. R. 2 Mod. Ca. 230.

And therefore, it is sufficient to assign a Breach, and find by the Verdict, *quod per Fraudem et Negligentiam Magistri, &c.* 2 Mod. Ca. 231.

But mere Negligence does not amount to Barratry. R. 2 Mod. Ca. 231.

[To constitute Barratry in the Master, there must be something criminal, as well as Deviation or Breach of Contract, therefore if by Bill of Lading he undertakes to go straight to *Marseilles*, and afterwards giving Notice by Advertisement, and by his Owner's Orders, and for their Benefit, and without Benefit to himself, he passes *Marseilles*, and goes to *Leghorn* first, and returning to *Marseilles* is lost, it is not Barratry. *Stamma v. Brown*, M. 16 G. 2. Str. 1173.]

[If the Crew force the Master to go out of the Course of the Voyage, to carry a Prize taken into Port, it is not Barratry, nor such a Deviation as will discharge the Insurers. *Elton v. Brogden*, H. 20 G. 2. Str. 1264.]

(3) *Restraint of Princes, Embargo*. Ma. 110, 111.

But such a Policy does not assure against Restraint for Non-payment of Customs. 2 Ver. 176.

Or, if the Assured navigates contrary to the Laws of the Country. 2 Ver. 176.

[If the Insured conceals from the Under-writer any Circumstance that increases the Risque, the Policy is void. *Carter v. Boehm*, P. 6 G. 3. 3 B. M. 1905.]

[If the Under-writer insures a Ship as on her Voyage, which he privately knows is arrived, an Action lies to recover the Premium from him. *Ibid.*]

[Facts only, not Speculations, are to be disclosed. *Ibid.*]

[The Insured need not tell the Under-writer what he *actually* knows, what he *ought* to know, what he takes upon himself the Knowledge of, or what he waives being informed of. *Ibid.*]

[In Insurances on *East-India* Ships, it is not necessary to disclose that there has been a new Agreement to detain the Ship a Year longer in the *Indies* than the enlarged Time provided for by the Charter-party; for this is the Course of that Trade, which the Under-writers are presumed to know; and this Detention, and its Consequences, are Part of the Risque they insure. *Salvadore v. Hopkins*, *Heaton v. Rucker*, and seven more Causes. T. 5 G. 3. 3 B. M. 1707.]

[If a Ship warranted neutral Property, is by stormy Weather wrecked, sunk and lost; and it appears she was not neutral Property when lost, the Insured cannot recover. *Woolmer v. Muilman*, T. 3 G. 3. 3 B. M. 1419.]

[By 19 G. 2. c. 37. No Assurance may be made on any Ship or Goods of the King, or his Subjects, Interest or no Interest, or without Benefit of Salvage;]

[But Privateers, and Goods from the Dominions of *Spain* and *Portugal* may be so assured.]

[No Re-assurance may be made unless the Assurer becomes Insolvent, or Bankrupt, or dies.]

[Money lent on Bottomree or Respondentia, shall be lent only on the Ship, or on the Goods, and shall be so expressed in the Bond; Benefit of Salvage to the Lender, who alone may make Assurance on the Money lent, and no Borrower shall recover more than his Interest, exclusive of the Money borrowed; and if his Share amounts not to the Money borrowed, he shall be responsible to the Lender for the Difference with Interest, tho' the Ship is lost.]

[In all Actions Plaintiff is, on fifteen Days Request, to declare how much he has insured, and how much he has borrowed at Bottomree, or Respondentia.]

[Defendant may pay Money into Court.]

[In case of total Loss, and Adjustment, with a Clause that in case of Salvage hereafter, the Insured shall return the Insurer whatever he recovers in such Proportion as the Sum insured bears to the whole Interest or Salvage. The next Proportion after deducting Salvage is to be returned and no more. *Da Costa v. Firth*, M. 7 G. 3. 4 B. M. 1966.]

[In a Declaration on a Policy signed by an Agent, Plaintiff need not lay different Counts, one as signed by the Principal, and another as signed by the Agent, duly authorized; either is sufficient. *Nickleston v. Croft*, T. 1 G. 3. 2 B. M. 1188.]

[If there are Articles of Agreement, that when any Ship wherein any Member has Property is lost, the Rest shall contribute to such Loss; and if any would cease to be a Member, he must give six Months Notice. A. has Property, but parts with it before the Loss, but agrees with the Purchaser to pay 500 A. if Loss happens, and has not given Notice of ceasing to be Member, he shall recover on the Articles against the other Members. *Reed v. Cole*, T. 4 G. 3. 3 B. M. 1512.]

(E. 10)
What Remedy upon a Policy of Assurance.

By the St. 43 El. 12. The Chancellor annually, or oftner, may grant a standing Commission to the Judge of the Admiralty, Recorder of London, two Doctors of the Civil Law, two Common Lawyers, and eight Merchants, who may examine, and decree all Causes concerning Policies of Assurance, which shall be entered within the Office of Assurance, within the City of London, in a Summary Course, without Formality of Pleadings.

And the Commissioners shall meet Weekly, and take no Fee for Execution of the Commission.

And may summon the Parties, examine Witnesses on Oath, and commit any who disobey their final Decree.

By the St. 13 & 14 Car. 2. 23. The Commission may authorize them, or any three of them, *Quorum* a Doctor of Law, or Barrister of five Years standing to be one, to meet and make a Court: And they may punish Contempt of Witnesses on first Summons, and Parties on second Summons, by Imprisonment and Costs. And any Commissioner may examine a Witness going to Sea, giving Notice, &c.

And Commissioners may pass a final Decree and Execution against Body or Goods, against Executor or Administrator, and give Costs.

But by the St. 43 El. 12. and 13 & 14 Car. 2. 23. A Party aggrieved, satisfying the Decree, or depositing the Money awarded, may in two Months exhibit a Bill in Chancery for Re-examination of the Decree, and the Chancellor, if he affirm it, shall give double Costs.

And if the Commissioners decree the Bill *pro Confesso* upon the first Summons, without Proof of the Bill, Chancery upon Appeal will reverse it. *Ver. 223, 4. Vide Action upon the Case upon Assumpsit.*

(F) Payment.

(F. 1.) *In Pecuniâ numeratâ.*

PAYMENT by a Merchant shall be made in Money, or by Bill. *Ma. 70.*

(F. 2.) By Bill Obligatory.

Payment by Bill is by Bill of Debt, Bill of Credit, or Bill of Exchange. *Ma. 70, 71.*

A Bill of Debt, or Bill Obligatory is, when a Merchant by his Writing acknowledges himself in Debt to another, in such a Sum to be paid at such a Day, and subscribes it at a Day and Place certain. *Ma. 74.*

Sometimes a Seal is put to it. *Ibid.*

But such Bill binds by the Custom of Merchants without Seal, Witness, or Delivery. *Ma. 72, 74.*

So it may be made payable to Bearer. *Ma. 71, 72, 74.*
And, upon Demand. *Ma. 72, 74.*

So it is sufficient, if it be made and subscribed by the Merchant's Servant. *Ma. 72.*

So a Bill of Debt to a Person certain may be assigned to another *toties quoties.* *Ma. 71.*

If a Bill be signed by two or more as Principals, each is bound by the Custom of Merchants only for his Part. *Ma. 75.*

So, tho' one or more subscribe the Bill of another as Principals. *Ibid.*

But if the Words are, *nos et quilibet nostrum in Solidum*, each is bound for the Whole. *Ibid.*

Or, if they subscribe as Sureties. *Ibid.*

Or, with a Renunciation of Privilege, &c. *Ibid.*

And now, by the *St. 3 & 4 Ann. 9.* All Notes in Writing made and signed by any Person, or the Servant or Agent of any Corporation, Banker, Merchant, or Trader usually intrusted to sign such Notes, whereby he promises to pay to any or Order, or to Bearer, any Sum of Money, the same shall be construed to be due to him to whom made payable.

And such Note payable to any or Order, shall be assignable or indorsible over as an Inland Bill of Exchange.

And the Party to whom the Note is payable may maintain an Action, as on an Inland Bill of Exchange, against him, who, or whose Servant, or Agent signed the same.

And he, to whom a Note, payable to any or Order, is indorsed, may maintain an Action against him, who, or whose Servant, or Agent signed the same, or against any, who indorsed the same, as in Case of Inland Bills of Exchange.

(F. 3.) Bill of Credit.

A Bill of Credit is, when a Merchant sends a Letter by a Servant, or Agent to another Merchant, within the Realm, or in foreign Parts, whereby he desires him to give Credit to the Bearer for Goods or Money, to such a Value. *Mar. 36. Ma. 71, 76.*

So he may give a general Letter of Credit to all Merchants or others, for all Monies delivered to such a One, within such a Time; and thereupon shall be liable for all Monies advanced to such Agent. *Mar. 36. Ma. 71.*

And if his Agent draw a Bill of Exchange upon his Master for Monies advanced upon such Letter of Credit, the Master shall be liable without his Acceptance, or tho' he refuses to accept. *Mar. 36. Ma. 272.*

(F. 4.) Bill of Exchange.

So Payment may be made by a Bill of Exchange.

A Bill of Exchange is, when a Man takes Money in one Country, or City upon Exchange, and draws a Bill, whereby he directs a Person in another Country or City to pay so much to *A.* or Order for Value received of *B.* and subscribes it. *Ma. 270. Mar. 1, 2.*

And therefore, generally, there are four Parties to a Bill of Exchange: 1. *The Deliverer*, who gives the Money upon Exchange. 2. *The Drawer*, who makes and subscribes the Bill. 3. *The Acceptor*, to whom the Bill is directed, and who is to accept and pay it. 4. *The Person to whom the Bill is payable.* *Mar. 2.*

Or three Parties are sufficient: As, if the Drawer directs the Bill to the Acceptor to be paid to *B.* for Value received of himself. *Mar. 3.*

Or, two Parties: As, if the Drawer makes a Bill to *A.* to be paid to himself or Order, for Value of himself. *Mar. 3. 1 Sal. 130.*

And a Bill of Exchange may be by one Merchant upon another, in a foreign Kingdom. *Mar. 2.*

Or, upon another, in the same Kingdom; and such Inland Bill is of the same Effect as an Outland. *Mar. 2.*

So,

So, if any, not a Merchant, make a Bill of Exchange, he shall be bound by it, according to the Usage among Merchants. *R. 2 Vent. 295, 310. Sbo. 125.*

So, if one, two, or three Bills of the same Tenor are made, a Stranger may sign the third Bill with the Drawer, and shall be bound thereby as Surety for the Drawer. *Ma. 271.*

(F. 5.)
In what Man-
ner.

The usual Form of a Bill of Exchange is, *At six Days Sight pay to A. or Af. signs 100l. for Value received of A. and put it to Account, as per Advice Your Friend C. D.*

To E. F. Merchant. Mar. 7.

[A Bill of Exchange is not good, if not paid for Value received. *Banbury v. Lisset, T. 17 G. 2. Str. 1212.*]

The Time of Payment is mentioned so many Days after Delivery, or at *Usance*, double or treble *Usance*, which imports one, two or three Kalendar Months after the Date, according to the Usage of the Place, where the Bill is made. *Mar. 13. Ma. 268, 270.*

Inland Bills are usually directed to be paid so many Days after Sight, or Delivery to the Acceptor. *Mar. 13, 19. Ma. 268.*

Bills of *London* to the *Netherlands, Paris, &c.* at *Usance*, or one Month after Date. *Mar. 13, 15, 18. Ma. 269.*

Of *London* to *Hamburg*, at double *Usance*, or two Months. *Ibid.*

Of *London* to *Venice, &c.* or *à contra*, at treble *Usance*, or three Months. *Mar. 13, 15, 19. Ma. 269.*

The most safe Direction of Payment is, to such an One, by Name, or Order. *Ma. 13, 14.*

To such an One, or his Assigns. *Ibid.*

So it may be, *To A. or Bearer*, tho' it be more perilous. *Mar. 13.*

To A. without more. *Ma. 270.*

So one may direct a special Manner of Payment. *Mar. 13.*

May make two or three Bills, and then shall say, *Pay this my first Bill: This my second Bill, the first not paid, &c.* *Mar. 7.*

If the Drawer makes himself Debtor to him to whom it is directed, he says, *Put to my Account.* *Mar. 7.*

If he to whom directed be indebted to him, he says, *and put it to your Account.* *Ibid.*

Or he may say, *Place to Account of A. &c.* *Ibid.*

So a Bill may be directed within the same Paper, or upon the Back of it. *Mar. 11.*

But a Witness is not necessary to a Bill of Exchange. *Mar. 14.*

So a Bill to pay 300l. or surrender a Person to Prison, is not a Bill of Exchange; for the Defendant has Election to do the One or the Other. *R. in G. B. P. 12 Ann. inter Smith and Bobeme. (Vide this Case cited in 2 Ld. Ray. 1362, 1396.—Vide 2 Mod. Ca. 362.)*

Or, to pay in three East India Bonds. *R. in C. B. (Vide 2 Ld. Ray. 1361.)*

Or, to pay so much per Menssem out of his growing Subsistence. *R. Cont. in C. B. Tr. 12 Ann inter Joscelyn and Loser.* But the Judgment was afterwards reversed in *B. R. per Parker, Powis, and Eyre, P. 1 Geo. (Vide this Case cited in 2 Ld. Ray. 1362. and Str. Rep. 591.)*

[A Bill to pay 9l. 10s. "as my Quarterly Half-pay, to be due from June to September next, by Advance," is a good Bill of Exchange. *Macleod v. Snee, P. 13 G. Str. 762. Ld. Raym. 1481.*]

[But a Bill to pay Money to A. out of a particular Fund, is not a Bill of Exchange. *Jenny v. Herle, P. 10 G. 2 Ld. Raym. 1361. Str. 591. Haydock v. Lynch, M. 3. G. 2. 2 Ld. Raym. 1563. Dawkes v. E. Delorane, T. 11 G. 3 3 Wils. 207.*]

By the Custom of Merchants, he to whom a Bill is payable, ought immediately after his Receipt to present the Bill to him, to whom it is directed, for his Acceptance. *Mar. 15.* (F. 6.)
How it shall be accepted.

Tho' a Bill payable to himself for his own Money. *Mar. 16.*

And it is safe to take a Copy of a Bill sent for Acceptance. *Mar. 10, 11.*

When a Bill is presented for Acceptance, *ex Rigore* he ought immediately to accept, or refuse; for he is not allowed three Days for Deliberation by the Custom of Merchants. *Mar. 15.*

Yet, twenty-four Hours upon Demand shall be allowed for Consideration, if the Post does not depart in the *Interim*. *Mar. 15, 16.*

And a longer Time is usually allowed, where Necessity does not prevent. *Ibid.*

The usual Acceptance is, by subscribing his Name. *Mar. 16.*

Or a verbal Acceptance, that it shall be accepted *craftino Die, &c.* is sufficient. *Mar. 16.*

Tho' he afterwards refuse to accept at the Day promised. *Mar. 16.*

But by the *St. 9 & 10 W. 3. 17.* and the *St. 3 & 4 Ann. 9.* Every Acceptance shall be by Subscription, or Indorsement of an Inland Bill.

[A Parol Acceptance is good against the Drawer; for the *Stat. 3 & 4 Ann. c. 9.* relates only to charging the Drawer with Damages and Costs. R. upon Debate, *per B. R.* and C. J. of C. B. who had ruled it *contra* in *Rea v. Meggot*, came over to their Opinion. *Lumley v. Palmer, M. 8 G. 2. Str. 1000. B. R. H. 74.*]

[There may be a partial Acceptance, by the Custom of Merchants. *Wegerstoffe v. Keene, M. 6 G. Str. 214.*]

So he may accept the Bill for Part. *Mar. 17.*

Or at a Day, subsequent to the Time limited for Payment. *Mar. 21.*

[If A. writes in a Letter, "I will pay the Bill, if B. do not: I do not expect they will pay it, but judge proper to take their Answer before I do; you may rest satisfied of the Payment" it is an Acceptance, and Interest shall be allowed from that Time. *Wilkinson v. Lutwidge, M. 11 G. Str. 648.*]

[Acceptance on Account of Ship A. when in Cash for her Cargo, good. *Julian v. Shobrooke, M. 27 G. 2. 2 Wils. 9.*]

[If A. desires Leave to draw on B. and he will reimburse him by Drafts on C. B. consents, A. draws, B. accepts, and then writes to C. to know if he will accept their Bills on the Credit of A. and C. answers that he will honour their Bill; this is in Effect an Acceptance, and C. shall pay a Bill drawn on him by B. after Notice from him that A. has failed. *Pellans v. Van Mierop, P. 5 G. 3. 3 B. M. 1663.*]

So, if a Bill be directed to A. and B. or either of them, an Acceptance by either is sufficient. *Mar. 16.*

If he, who ought to accept, loses the Bill before Acceptance, he must give Security for Payment, otherwise it shall be protested for Non-acceptance, and also afterwards for Non-payment. *Mar. 29, 30.*

So a Stranger may accept for the Credit of the Drawer. *Mar. 21, 30.*

And the Acceptor cannot afterwards recall his Acceptance. *Mar. 20.*

But an Acceptance by a Wife, or Servant, does not bind the Husband, or Master, without Authority by Letter of Attorney. *Mar. 25.*

Tho' they have Authority by Parol, or Letter under his Hand. *Mar. 25.*

Yet, Usage of Payment upon an Acceptance by a Wife or Servant, will be Evidence of a good Authority to them. *Mar. 25, 26.*

[If Drawee refuses Acceptance, not having Effects of Drawer, and some Time after he has Effects, and will do what he can; and the Bill is again presented, and left with him for ten Days, and Drawee then offers to let the Holder of the Bill have some Effects to sell and pay himself, this is not Acceptance. *Clavey v. Dolbin, T. 9 G. 2. B. R. H. 278.*]

[If a Man accepts Bill of Exchange, to pay it when Goods consigned to him are sold, it is good against Acceptor; tho' the Holder of the Bill might have refused such Acceptance, and protested the Bill, yet he might submit to it. *Smith v. Abbot, P. 14 G. 2. Str. 1152.*]

(F. 7.)
How paid.

The Acceptor ought to pay the Bill, by him accepted, within three Days after the Time limited for Payment. *Mar. 23, 24. 1 Sal. 128.*

And the three Days shall be computed, exclusive of the Day upon which it became payable. *Mar. 23, 24.*

Except where Prejudice may happen by the Delay: As, where the Post will depart in the *Interim*, or the third Day is a *Saturday*, &c. *Ibid.*

So, if a Bill be dated 1st *May* payable at *Ufance*, it shall be paid three Days after the 1st *June*. *Mar. 18.*

If payable at double, or treble *Ufance*, three Days after the 1st *July*, or *August*. *Ibid.*

If dated ult' *February*, three Days after ult' *April*, or *May*, and not after the 28th of *April*, or *May*, tho' *February* has but twenty-eight Days. *Ibid.*

If payable at a Day certain, viz. 9th *March*, &c. it ought to be paid, according to the *Stile* where payable. *Mar. 22, 25.*

If payable at six Days Sight, it ought to be paid so many Days after actual Acceptance, or in three Days after. *Mar. 19.*

If a Bill directs the Payment at a certain Place, it ought to be paid there, without other Demand than at the Place, tho' the Acceptor lives at a Place remote. *Mar. 26.*

If it directs the Payment to *A. or Order to the Use of B.* it shall be paid to *A. or Order*, who is a Trustee for *B.* *R. 2 Vent. 310.*

If a Bill after Acceptance be lost, upon Notice of the Loss by a Notary, the Acceptor ought to pay it, if a Bond or sufficient Security be given to him for his Indemnity. *Mar. 19, 20.*

But if the Deliverer after Acceptance countermand his Bill, and this be duly notified by a Notary to the Acceptor before the Time of Payment, it ought not to be paid; for the Deliverer of the Money is Master of the Bill till Payment. *Mar. 17, 18.*

And therefore, it ought not to be paid before it is due, and if it be, it will be at his own Peril, if it be afterwards countermanded. *Mar. 31, 32.*

(F. 8.)
How protested.
For Non-Ac-
ceptance.

If the Person, to whom a Bill of Exchange is directed, refuses Acceptance, a Protest of Non-acceptance shall be made by a Publick Notary, and thereupon the Drawer, or Indorser must give Security for Payment with Damages and Costs, if it be not paid by him, to whom directed, at the Time limited in the Bill. *Mar. 24, 27, 28.*

So, it shall be protested, if it be accepted only for Part. *Mar. 17, 21.*

If it be accepted at a Day after the Time of Payment limited by the Bill. *Mar. 21.*

If a Bill, directed to two jointly, be accepted only by One. *Mar. 16.*

If it be accepted by a Stranger, for the Credit of the Drawer. *Mar. 21.*

Or by him, to whom directed, for the Credit of the Drawer, but not for the Intent mentioned in the Bill. *Mar. 30.*

So there shall be a Protest, if he, to whom it is directed, cannot be found, or is not found at his House. *Mar. 33.*

So, if a Bill be accepted, and afterwards the Acceptor fails in his Credit, other Security may be demanded from the Acceptor by a Notary, and if it be refused, the Bill shall be protested for Want of better Security. *Mar. 27.*

Security, upon a Protest for Non-acceptance, is usually given by another Subscription under the Protest, That he will be bound as Principal for the Sum mentioned in the Bill, upon which the Protest is made. *Mar. 28.*

But by the *St. 3 & 4 Ann. 9.* A Protest need not be on an Inland Bill, unless it be for Value received, and for 20*l.* or more.

And the Drawer is not liable for Costs, &c. on Non-acceptance, unless Protest be made for that Cause, and Notice given of it in fourteen Days after, to him from whom the Bill was received.

So, if he, to whom payable, does not protest the Bill for several Years after it is due, the Drawer shall not be charged. *Per Treby, 1 Sal. 127.*

But an Action lies upon an Inland Bill, since the 3 & 4 Ann. 9. for the Original Debt upon a Bill, without a Protest; for that is not requisite, except for extraordinary Damages for Delay of Payment. *R. Mod. Ca. 81.*

So, if a Bill be accepted, and not paid in three Days after the Time limited for Payment, a Protest shall be made by a Notary for Non-payment, and there-^(F. 9.) upon the Drawer shall be bound to all Damages and Costs. *Skin. 410.* For Non-payment.

And the Drawer shall pay presently, or shall take the same Time for it, as was allowed for Payment upon the Bill of Exchange. *Mar. 28.*

And tho' the Bill be protested for Non-payment, or for Want of other Security, the Acceptor shall not be excused. *Mar. 13.*

If a Bill be protested for Non-payment, Security may be required of the Drawer, as well as upon a Protest for Non-acceptance. *Mar. 28.*

Or, if the Bill was before protested for Non-acceptance and Security then given, it is sufficient that Notice be given to the Drawer. *Ibid.*

So, if a Bill be paid only in Part, he may receive so much, and make a Protest for Non-payment of the Residue. *Mar. 17.*

Tho' it was accepted only for Part, and protested for Non-acceptance. *Mar. 16, 17.*

Or, if a Bill be accepted at a subsequent Day, and a Protest for Non-acceptance, according to the Tenor of the Bill, if the Acceptor afterwards refuse Payment at the Day by him accepted, it shall be protested again for Non-payment. *Mar. 21.*

If the Acceptor dies, the Bill shall be demanded at the Time it is due, of his Executor or Administrator, and if it is not paid, there shall be a Protest. *Mar. 32.*

So, if he, to whom payable, die, and Security be offered for the Indemnity of the Acceptor, there shall be a Protest, if it be not paid, tho' no Will be proved, or Administration taken. *Ibid.*

The Protest must be made by a Publick Notary upon all foreign Bills of Exchange. *1 Sal. 131.* ^(F. 10.) How the Protest shall be made.

And upon the Bill itself, not upon a Copy, except for special Cause. *Sbo. 164.*

But where the first Bill is lost, and a Copy is sent; by Reason a third cannot be had, and the second was not sent, the Protest may be upon the Copy. *R. Sbo. 164.*

By the *St. 9 & 10 W. 3. 17.* The Protest on an Inland Bill shall be by a Publick Notary, or in Default, by other substantial Person of the City, or Place, before two Witnesses, by Writing under a Copy of the Bill: *Know, &c. 1 A. on—Day of—at the usual Abode of—demanded Payment of the above Bill, which he did not pay, wherefore 1 A. protest the said Bill. Dated—Day of—*

The Protest must be made during the usual Time of Commerce, viz. before Sun-set. *Mar. 27.*

It ought to be made, regularly, at some Time upon the third Day after the Day of Payment. *Mar. 24.*

Or it may be at any Day afterwards. *Ibid.*

By the *St. 9 & 10 W. 3. 17.* It shall be after the Expiration of the three Days after an Inland Bill becomes due.

And the Protest shall be sent, or Notice of it given, in fourteen Days to the Party from whom the Bill was received, who shall pay, on producing it, the Principal, Interest, and Charges, otherwise he that neglects to make, and send such Protest, or give Notice, shall be liable to all Costs, Damages and Interest.

And therefore, for Default of a Protest of an Inland Bill proved at the Trial, the Drawer shall discount the Damages, which he sustained by such Default.

1 Sal. 131.

Or he may have an Action for such Damages. *1 Sal. 131.*

And the Plaintiff shall lose his Interest and Costs for Want of a Protest in due Time. *Ibid.*

[If

[If the Bill is not protested according to the 9th & 10th W. 3. the Drawer cannot be charged for Interest, nor can Interest be allowed for Money lent without a Note. *Harris v. Benson*, T. 5 G. 2. Str. 910.]

(F. 11.)
How a Bill of
Exchange
may be assign-
ed.

If a Bill of Exchange be made payable to B. or Order, B. by Indorsement may assign it to another. 1 Sal. 125.

So the Assignee, or Indorsee, may assign to another *toties quoties*. 1 Sal. 125.

So an Inland Bill, payable to B. or Bearer, may be assigned by B. and he will be liable to his Indorsee. R. 1 Sal. 125.

If a Bill be payable to B. or Order for the Use of C. it may be assigned by B. tho' he be Trustee for C. R. Carth. 5.

The Indorser charges himself as the original Drawer, and not only as Surety for him. Cont. 1 Sal. 126. Acc. 1 Sal. 133.

And therefore, in an Action against the Indorser, there is no Need of Proof of Refort to the Drawer, and Refusal by him. Cont. per Holt 1 Sal. 126, 127. Semb. acc. 1 Sal. 133. Vide Post, (F. 13.)

If upon a Bill payable to B. or Order, B. indorses his Name and sends it to another to get it accepted, the other may endorse a Receipt for the Money, and receive it in his Name, or indorse an Assignment to himself. Mar. 30. 1 Sal. 126, 128, 130.

But a Bill payable to A. or Order cannot be assigned to another for Part of the Money; for then upon a single Contract, a Man would be subject to several Suits. R. Carth. 466.

[An Executor or Administrator may indorse Notes or Bills, within the Custom of Merchants. *Robinson v. Stone*, M. 20 G. 2. Str. 1260. *Barnes* 164.]

(F. 12.)
Remedy upon
a Bill of Ex-
change.
Against the
Drawer.

If A. draws a Bill of Exchange upon B. payable to C. and it be protested for Non-acceptance, not finding other Security, or for Non-payment by B. an Action upon the Case upon *Assumpsit* lies against A. by the Custom of Merchants, for the Money, and the Damages consequent upon Non-payment.

So a General *Indebitatus Assumpsit* lies against the Drawer, for Money received to his Use. 1 Sal. 125.

So Debt lies against A. who was indebted by Receipt of the Money. 1 Sal. 23. R. Cont. T. 11 Geo. in B. R. inter *Welsh and Craig*. (Reported 1 Str. 680.)

And A. shall be charged, tho' he be not a Merchant; for when he makes a Bill of Exchange, he shall be liable according to the Usage among Merchants. R. 2 Vent. 295, 310. R. 1 Sal. 125. Sho. 125. Carth. 82.

So A. shall be charged upon an Inland, as well as upon a Foreign Bill of Exchange. 1 Sal. 125. Clift 927.

So he shall be charged by C. tho' he has indorsed it to D. for his Account, and as Servant to him. R. Sho. 164.

So, if a Bill be payable to C. or Order, or to C. and his Assigns, and by Indorsement C. assigns to D. and he to others, and B. does not accept, &c. an *Assumpsit* lies against A. by an Indorsee or Assignee. R. 2 Vent. 308.

So, if B. accepts, and afterwards fails in Payment.

So, if an Indorser pays to any Indorsee, A. is afterwards liable to him. R. Lut. 888. Carth. 130.

[The Indorsee may recover the whole Sum against the Drawer, tho' the Indorser has paid him Part of it. *Johnson v. Kennion*, P. 5 G. 3. 2 Wils. 262.]

So A. will be liable, tho' the Bill was not presented at the due Time, if no Accident in the Interim. R. Sho. 318.

So A. will be liable, tho' the Indorser was a Trustee for C. against whom an Extent was sued. R. Carth. 5.

But if the Drawer upon Protest repay the Money to the Deliverer, he shall not be afterwards liable to C. or any Indorsee. Mar. 35.

So the Drawer shall not be charged, if the Bill be not, after the Time of Payment, protested in a convenient Time. Per Treby, 1 Sal. 127.

If a Bill be not payable to another, or Order, tho' it be indorsed, the Indorsee shall not charge the Drawer. *Per Holt, 1 Sal. 133.*

[If the Indorsee gives the Acceptor Time for Payment several Times, till the Acceptor fails, he cannot recover against the Drawer. *Gee v. Brown, M. 1 G. 2. Str. 792.*]

[If a Bill of Exchange accepted, and payable on Saturday, is not tendered till Tuesday, when the Acceptor stops Payment, the Drawer is discharged. *Coleman v. Sayer, H. 2 G. 2. Str. 829.*]

So, if A. draws a Bill of Exchange upon B. payable to C. or Order, and B. accepts it, an *Assumpsit* lies by the Custom of Merchants by C. against B. for by his Acceptance he undertakes to pay. *R. 1 Rol. 6. l. 45. 2 Cro. 306.* (F. 13.) Against the Acceptor, &c.

So, if C. by Indorsement assigns to D. and he to others, B. will be liable to an *Assumpsit*, by any Assignee.

So every Indorser shall be liable to any subsequent Indorsee. *R. Skin. 343, 410.*

Tho' the Bill was payable to B. or Bearer; for the Indorsement makes a new Bill. *R. 1 Sal. 125, 133. Skin. 410.*

Tho' the Bill was forged, &c. for the Indorsement charges the Indorser, and therefore the Hand of the Drawer to the Bill need not be proved. *Per Holt, 1 Sal. 127.*

If A. draws two or three Bills for the same Sum, according to the Custom of Merchants, the one payable if the other be not paid, and B. accepts the second, and not the first, an *Assumpsit* lies against him upon the first with an Averment, that he has not paid the One or the Other. *Dub. T. 12 W. 3. inter Milner and Harrison.*

If B. accepts a Bill for himself and C. who are Joint-traders, in respect of their Trade, both are bound. *1 Sal. 126.*

If the Acceptance be a Year after the Bill was payable. *R. Carth. 459.*

So, if A. draws a Bill payable to C. for the Use of D. and C. indorses it, an *Assumpsit* lies by the Indorsee, tho' C. had paid it upon an Extent at the Suit of the King against D. For C. was the visible Owner. *R. Sho. 4.*

Tho' C. sold to the Indorsee upon a Discount, where the Bill is payable to C. or Order, and not Bearer. *Per Holt, 1 Sal. 128.*

Tho' a Recovery be against the Drawer, if no Satisfaction thereon. *R. cont. but reversed 2 Sho. 495.*

[Action lies for the Indorsee (2. as to the Drawee?) of a Bill of Exchange against a Servant on whom it is drawn and accepted generally, though the Order is to place it to the Account of his Masters, and the Letter of Advice sent to his Masters. *Thomas v. Bishop, M. 7 G. 2. Str. 955. B. R. H. 1.*]

[Action lies for the Drawer, against the Drawee, after Acceptance. *Simmonds v. Parminter, H. 21 G. 2. Affirmed by House of Lords. 1 Wilf. 185.*]

[If A. draws on B. for 50 l. in favour of C. who indorses and negotiates the Bill, which is sent to B. who keeps it ten Days till payable, and then returns it unaccepted, but having put a private Mark on it, the Indorsee demands and receives the Money from C.; in the mean Time A. is Bankrupt, C. brings Bill against B. who answers, and dies, and the Cause is revived against his Executrix; Equity will retain the Bill, though for a legal Demand, (otherwise if B. had been alive) and determine on the Facts relating to the legal Demand; and will decree B.'s Executor to pay C. the 50 l. and Interest from filing the original Bill, and Costs from filing the Bill of Revivor. *Powel v. Monnier, P. 1737. 1 Atkyns 611.*]

But Debt does not lie against the Acceptor; for his Engagement is collateral. *R. Hard. 487. Acc. 1 Sal. 23.*

So, if the Drawer upon a Protest repay the Money mentioned in the Bill to the Deliverer, the Acceptor cannot be afterwards sued by him to whom the Bill was payable, if he was only Assignee to the Deliverer. *Mar. 35.*

So, if an Indorser be not charged in a convenient Time after the Bill due, an Action does not lie against him. *Per Holt, 1 Sal. 128, 132.*

And three Days seem a convenient Time upon an Inland, or Foreign Bill, but the Usage of Merchants ought to govern in such a Case. 1 Sal. 132, 3.

Or, if there be not a Demand, or a prior Endeavour to have it from him, who drew the Bill, or to whom it was directed. 1 Sal. 126, 127, 132. (*Vide Ante*, (F. 11.) *Post*, (F. 14.)

If there be not a Demand on the Indorser after the Indorsement made. *Per Holt*, 1 Sal. 128.

So, if a Bill, payable to *B. or Bearer*, be indorsed to another, the Indorsee cannot maintain an Action upon it. *R.* 1 Sal. 125. *Skin.* 332.

If a Bill be accepted by one Joint-trader for himself and his Partner, when it does not concern their Trade, it does not bind his Partner. 1 Sal. 126.

[The Acceptor cannot be sued here, after he has been discharged by the Laws of the Country where the Acceptance was made. *Burrows v. Femino*, in *Canc.* *M.* 13 G. *Str.* 733.]

[In Case against the Acceptor, the Drawer's Hand need not be proved, but the Defendant may disprove it. *Wilkinson v. Lutwidge*, *M.* 11 G. *Str.* 648.

(F. 14.)
How the Remedy is to be pursued.

In an *Assumpsit* upon a Bill of Exchange, the Plaintiff must declare upon the Custom of Merchants; for an *Indebitatus Assumpsit* does not lie without a Consideration proved. *Per* 2 J. 1 *Vent.* 153. *Semb.* *Lut.* 1585, 1594. *Cartb.* 83. *Skin.* 332. *R.* 2 *Mod. Ca.* 373.

And if the Declaration be upon the Custom, and also an *Indebitatus Assumpsit*, and intire Damages, there shall be no Judgment. 1 *Vent.* 153. *R.* 1 Sal. 24, 129. 1 *Lev.* 298.

So it must alledge the Custom, *amongst Merchants, &c.* for if it be alledged amongst all Persons, it will be bad. *R.* *Lut.* 892. *b.*

Or, that *by the Custom of England*, tho' the Words, *of England*, shall be rejected as Surplusage. *R.* *Hard.* 486. *R.* 5 *Mod.* 367.

So the Declaration must shew the Custom pursued: And therefore, it ought to shew the Time and Manner of Acceptance. *R.* *Lut.* 233.

Ought to shew what the Time shall be by the Usage, if the Bill be payable at *Usance, &c.* 1 Sal. 131.

But if the Custom be alledged at *London*, that any Merchant, &c. it is well. *R.* *Lut.* 233, 1585.

And if the Plea be general, that *by the Custom of Merchants, &c.* it is sufficient, without shewing the Custom specially; for the Court will take Notice of it. *R.* *Sbo.* 129.

If the Declaration be upon the Custom, and that he to whom directed refused Payment, per quod the Drawer *onerabilis devenit*, it is sufficient, without an express Promise alledged. *R.* 1 Sal. 128.

So it is sufficient to say, *quod fecit Billam Manu sua subscript'* tho' it does not say, *secundum usum Mercatorum.* *R.* *Lut.* 279.

Or, that *Value was received.* *Lut.* 889. *a.*

That it was accepted and paid for the Honour of the Drawer, without saying to whom. *R.* after *Verdict.* *R.* *Lut.* 899. *b.*

That the Defendant was an Indorser, without an Averment, that the Plaintiff demanded it of the Drawer, or former Indorser. *Cont. per Holt.* 1 Sal. 126. *R.* *Acc.* 1 Sal. 133. *Vide Ante*, (F. 11, 13.)

That the Defendant undertook to pay *secundum Tenorem Billæ*, tho' the Acceptance was after the Bill due; for, *secundem Tenorem* shall be rejected as Surplusage. *Per Holt*, 1 Sal. 127, 129.

It is not necessary to make mention of the Protest in a Declaration upon an Inland Bill upon the *St.* 9 & 10 *W.* 3. 17. *R.* 1 Sal. 131.

Or, that he inquired for him, to whom the Bill was directed, before Protest; for, *quod non fuit inventus*, is sufficient. *R.* *Cartb.* 510.

Nor is it necessary to alledge a Promise after Protest. *Ibid.*

[*Per Curiam* on Consideration. A Demand on the Drawer of a foreign Bill of Exchange, is not necessary to make a Charge on the Indorser, but the Indorsee has his Liberty to resort to either for the Money. *Bromley v. Frazier*, *T.* 7 G. *Str.* 441.]

[A Demand need not be made on the Drawer of a Bill of Exchange, to intitle an Indorsee to an Action; for every Indorser is a new Drawer. *Per Hardwicke C. Lake v. Hayes, H. 1736. 1 Atkyns 281.*]

[In Actions on *Inland Bills*, by Indorsee against Indorser, Plaintiff must prove Demand, or due Diligence to get the Money from *Drawee* or *Acceptor*, but need not prove Demand on *Drawer*; on promissory Notes, Indorsee Plaintiff must prove Demand or Diligence on Maker of the Note. *Heylyn v. Adamson, M. 32 G. 2. 2 B. M. 669.*]

[The second Indorser, in an Action against the first, need not shew a Demand on the Drawer, but he should say he has not paid it. *Lawrence v. Jacob, P. 8 G. Str. 515.*]

[If a Bill be drawn payable to *A. or Order*, who indorses it to *B.* without the Words, "or Order," and *B.* declares as on an Indorsement to *him or Order*, it is good, and *B.* might have indorsed it. *Acheson v. Fountain, T. 9 G. Str. 557.*]

[The Words "or Order" are not necessary to be inserted in the *Indorsement*, the Bill is negotiable without them. *Edie v. East-India Company, T. 1 G. 3. 2 B. M. 1216.*]

So, if the Custom be alledged, that the Bearer shall maintain an Action upon a Bill payable to *B. or Bearer*, and the Defendant demurs, Judgment shall be for the Plaintiff; for by the Demurrer the Custom is confessed, tho' there is none such. *R. 1 Sal. 125. Skin. 346.*

So, if the Declaration alledges, *quod indorsavit*, without saying, that he subscribed it, it is sufficient after Verdict for the Plaintiff; for a good Indorsement must be proved. *R. 1 Sal. 130.*

So, if the Action is upon the first Bill, and it is not alledged, that the second or third was not paid; for it shall be intended after Verdict. *R. 1 Sal. 130. Carth. 510.*

[When a Bill is drawn, *Pay my first, my second not paid*; in an Action on the first, it is not necessary to aver that the second was not paid. The Averment on one goes to the other also. *Wegersloff v. Keene, M. 6 G. Str. 214.*]

[It is not necessary to lay an express *Assumpsit*; nor to alledge a Request before Action brought. *Ibid.*]

So, if the Declaration alledges the Custom to be, that if a Bill be duly accepted and afterwards refused, the Drawer shall be liable, and shews that the Bill was after the Time it became due presented and refused, it will be well; for the Drawer is liable at any Time; and the alledging the Custom more strict than was necessary, was Surplusage. *R. Sbo. 318.*

So in a Plea of a Bill of Exchange, the Custom need not be alledged. *R. Carth. 83.*

[Whether Action can be brought against the Drawer of a Bill protested before the Day of Payment; *Dub. Bright v. Purrier, P. 5 G. 3. 3 B. M. 1687.*]

[The Indorsee of an Administrator may declare, without a *Profert* of Letters of Administration. *Barnes 164.*]

["Pay the Contents" may be wrote in Court over the Indorser's Name. *Barnes 453.*]

(F. 15.) Promissory Note.

So, by the *St. 3 & 4 Ann. 9.* After 1st May 1705, All Notes made by any Person, (or by the Servant or Agent of any Trader, usually intrusted to sign Notes for his Master,) whereby Promise is made to pay a Sum to any or Order, shall be payable, indorsible, or assignable, as an *Inland Bill of Exchange*.

And the Person, to whom payable, indorsed, or assigned, may maintain an Action against him who signed, or whose Servant or Agent signed it, or against any of the Indorsers, as in Case of *Inland Bills of Exchange*.

And Notes payable to any, or Bearer, shall be construed due to the Person, to whom made payable, who may maintain an Action as in Case of *Inland Bills*, against him who signed, or whose Servant or Agent signed it.

Before

Before that Statute, a Note payable to *A. or Order*, if it was assigned or indorsed to *B.* could not have been sued by *B.* except in the Name of *A.* For it was not in the Nature of a Bill of Exchange. *R. cont. in C. B. T. 9 W. 3. rot. 500. Cromwell. Dub. B. R. T. 12 W. 3. inter Swift and Butcher. R. acc. B. R. Clerk and Martin, 1 Sal. 129. R. inter Buller and Crips, 2 Ann. Mod. Ca. 29.*

So, upon a Note to *A. or Bearer*, the Law does not presume an *Assumpsit* to the Bearer. *R. 3 Lev. 299. Acc. inter Butcher and Swift, T. 12 W. 3.*

And the Plaintiff could not declare upon a Promissory Note, as upon a Bill of Exchange. *R. 1 Sal. 24, 129.*

But now, upon a Note to *A. or Bearer*, an *Assumpsit* lies by *A.*

And if a Note be payable to *A. or Order*, an *Assumpsit* lies by *A.* or by any to whom it shall be indorsed; for by the *St. 3 & 4 Ann. 9.* the Assignee or Indorsee may maintain an Action against the Drawer or Indorser, and recover Damages. *2 Mod. Ca. 374.*

Yet Debt does not lie upon a Promissory Note, by any against the Indorser, or Drawer; for it is made by the *St. 3 & 4 Ann. 9.* of the Nature of a Bill of Exchange, which is only Evidence of a Debt. *R. 2 Mod. Ca. 373.*

[Whether Demand on Drawer is necessary to charge Indorser, is a Point in much Doubt; but the Objection must be made at Trial, for on the Face of the Declaration it is well, *Hamilton v Mackrell, M. 10 G. 2. B. R. H. 322.*]

[*Eyre C. J.* in *C. B.* directed to find for Defendant, Indorser of a promissory Note, because Plaintiff did not prove Demand on the Drawer. *Sydebottom v. Smith, M. 12 G. Str. 649.*]

[There must be a Demand on the Drawer of a Note before the Indorser can be charged; if he is run away, it is not enough to shew that, but Plaintiff must prove he attempted to find him out. *Collins v. Butler, H. 11 G. 2. Str. 1087. Per Hardwicke C. J. sed vide infra, Cooper v. Le Blanc.*]

[*Hardwicke C. J.* said, *Holt C. J.* and *Eyre C. J.* were of Opinion that the Indorser of promissory Note should not be charged, unless a Demand had been made on the Drawer; but that *Pratt C. J.* *King C. J.* *Raymond C. J.* and himself, were of Opinion he might, and determined accordingly in this Case. *Cooper v. Le Blanc, T. 9 G. 2. B. R. H. 295. Sed v. Heylyn v. Adamson supra. F. 14.*]

[If Indorser pays Part of a Note, it is not necessary to prove Demand on Drawer. *Vaughan v. Fuller, H. 19 G. 2. Str. 1246.*]

[If the Indorsee receives Part of the Drawer, the Indorser is absolutely discharged. *Kellock v. Robinson, H. 13 G. Str. 745.*]

[It is the same Thing, whether the Drawer, or one for him, pays the Money; and so if the Drawer is sued by the Indorsee, who obtains interlocutory Judgment, and the Bail pay the Note, and take Assignment of Note and Judgment, they cannot recover against the Indorser. *Hull v. Pitfield, H. 17 G. 2. Wilf. 46.*]

[If a Husband indorses a Note given to him by his Wife, it is good as between him and the Indorsee. *Haly v. Lane, P. 1741. 2 Atkyns 181.*]

[So if the Note be given by an Infant. *Ibid.*]

[So though some of the Indorsees did not pay a valuable Consideration, yet if the last did, it is good as to him, unless Fraud or Equity appears. *Ibid.*]

[The Bearer of a Note, "pay to *Ship Fortune* or Bearer," may bring Action in his own Name, and declare both as on an Inland Bill of Exchange, and for Money had and received. *Grant v. Vaughan, T. 4 G. 3. 3 B. M. 1516.*]

[If Plaintiff has indorsed a Note in Blank, his Name may be struck out after the Note is delivered in at *Nisi prius*. *Theed v. Lovell, M. 12 G. 2. Str. 1103.*]

[Proof of the acknowledgment of Indorser of his Name, is not Evidence against the Drawer in Action by Indorsee; the Indorser's Hand must be proved. *Barnes 436.*]

[If a promissory Note is wrote in the Defendant's own Hand, there needs no Subscription, nor need it be laid in the Declaration that he signed it. *Taylor v. Dobbins, M. 7 G. Str. 399. Elliot v. Cooper, M. 7 G. 2 Ld. Raym. 1376. Str. 609.*]

[If one Action is brought against the Drawer, and another against the Indorsee of a promissory Note, Execution shall be only on one. *Windham v. Wither*, P. 8 G. Str. 515.]

[Promissory Note payable to A. or Order, may be assigned by the Administrator of A. and the Indorsee may bring Action in his own Name, without Profer of the Letters of Administration alledging Custom of Merchants. *Rawlinson v. Stone*. In C. B. affirmed on Error in B. R. M. 20 G. 2. 3 Wils. 1.]

[By Stat. 15 G. 3. c. 51. Negotiable promissory Notes and Inland Bills under 20s. are prohibited under Penalty from 20l. to 5l. recoverable before one Justice on Non-payment and Want of Distress three Months Imprisonment, to continue five Years.]

[By Stat. 17 G. 3. c. 30. Negotiable Notes under 5l. shall specify the Person to whom payable; the real Date; shall be payable within 21 Days of it, and not negotiable after that Time. Note and Indorsement to be attested by one Witness. Penalties as in 15 G. 3. c. 51. both Acts to continue five Years.]

A Note Promissory does not require any express Form of Words: And therefore, a Note whereby A. promises to account with B. or Order for 10l. is good and assignable; for it is tantamount to, I promise to pay, &c. R. 11 Geo. 2 Mod. Ca. 363. (F 16) What Words make a Promissory Note assignable.

[A promissory Note to pay within two Months after a Ship is paid off. *Andrews v. Franklin*, H. 3. G. Str. 24. *Evans v. Underwood*, H. 23 G. 2. 1 Wils. 262.]

[A promissory Note from A. to pay so much to B. for the Debt of C. to B. *Popplewell v. Wilson*, H. 6 G. in Error. Str. 264.]

[A promissory Note to be accountable to Order for 100l. Value received. *Morris v. Lee*, T. 11 G. Str. 629. 2 Ld. Raym. 1396.]

["I do acknowledge that A. delivered me such Bonds and Notes, and B.'s Receipt and Bill on me for 10l. which 10l. and 15l. 5s. Balance due to A. I am still indebted, and promise to pay." *Chadwick v. Allen*, T. 12 G. Str. 706.]

["I promise to pay to A. &c. three Months after Date, Value received of the Premises in Rosemary-lane," *Burchel v. Slocock*, M. 2 G. 2. Ld. Raym. 1545.]

[Note given to an Infant, payable when he shall come of Age, viz. such a Day. *Goss v. Nelson*, H. 30 G. 2. 1 B. M. 226.]

[To pay six Weeks after the Death of his Father; for there is no Contingency whereby it may never become payable. *Cooke v. Coleban*, M. 18 G. 2. Str. 1217.]

But, I promise to pay 70l. or Surrender A. is not assignable; for it was satisfied by Surrender. R. 11 Geo. 2 Mod. Ca. 362.

Or, I promise to pay 10l. to B. if my Brother does not by such a Day. 2 Mod. Ca. 263.

[Or to pay so many Days after Grantor should marry, is not negotiable within the Statute. *Beardesley v. Baldwin*, P. 14 G. 2. Str. 1151.]

[Or to deliver up Horses and a Wharf, and to pay Money at a certain Day, within the Statute. *Martin v. Chauntry*, T. 21 G. 2. Str. 1271.]

[A Note payable eventually, upon an uncertain Contingency, can never be a negotiable Note; as to pay on the Death of A. if he leaves Drawer sufficient to pay it, or he is otherwise able. *Roberts v. Peake*, P. 30 G. 2. 1 B. M. 323.]

(F. 17.) When a Bill, &c. shall be Payment.

If a Bill of Exchange or Promissory Note be given to another, and accepted as Money, it will be a good Payment.

So, if A. sells Goods to B. who agrees to deliver a Bill, or Note for his Satisfaction, if the Bill, &c. be delivered, it will be a Payment, tho' the Bill be never paid. 1 Sal. 124.

So, if A. gives his own Bill of Exchange upon B. payable to C. or Order; to C. for Value received, who keeps it for two Years, it will be a Payment; for

If he does not resort to *A.* in a convenient Time, it shall be presumed, that he is satisfied with the Bill. *Per Holt, Sho. 1155.*

By the *Sr. 3 & 4 Ann. 9.* An Inland Bill accepted for Satisfaction of a Debt shall be deemed full Payment, if the Person accepting it take not due Course to obtain Payment, by endeavouring to get it accepted and paid, or protested.

[If a Man receives a Goldsmith's Note at two on *Saturday*, and does not demand it till *Tuesday Morning*, it is Payment. *Manwaring v. Harrison, H. 8 G. Str. 508.*]

[If *A.* indorses a promissory Note to *B.* who gives a Receipt, "Received the Contents when the above Bill is paid," and keeps it from 28th *March*, when it became payable, to 13th *May*, when the Giver of the Note fails, it is good Payment in *A.* *Smith v. Wilson, P. 11 G. 2. Andr. 187.*

[A Goldsmith's Note, paid in at half past Eleven, and not demanded till next Day at two, is Payment. *East-India Company v. Chitty, M. 16 G. 2. Str. 1175.*]

[And so a Bill accepted, by Writing an Order on his Goldsmith to pay it when due, is Payment, if not tendered at the same Time as a Note or Draft. *Bishop v. Chitty, T. 16 G. 2. Str. 1195.*]

[If a Creditor takes a Draft from his Debtor, on another, though it is not payable to him or Order, and keeps it an unreasonable Time, and Drawee breaks; yet it is Payment. *Chamberlyn v. Delarive, T. 7 G. 3. 2 Wils. 353.*]

But, regularly, a Bill or Note given to a Creditor shall not be a Discharge of the Debt, till Payment; unless it be accepted in Discharge. *1 Sal. 124.* For, without an express Agreement to take it in Discharge, the Acceptance is only, upon Condition if it be paid. *Sal. 442. Skin. 410.*

So, if *A.* being indebted to *B.* indorse a Bill of Exchange, and send it to him; it will not be a Payment, tho' it continues in his Hands a long Time after it is payable. *R. 1 Sal. 124.*

And *B.* may afterwards sue *A.* for his Debt; and such Bill shall not be allowed in Satisfaction. *Per Holt, 1 Sal. 124.*

So, if a Bill, sent to a Goldsmith by a Servant, be paid in Part, and another Bill given for the Residue; the Acceptance of the other Bill by the Servant will not be a Payment for the Residue, if the other Bill be not paid. *R. Mod. Ca. 36. Sal. 442.*

Tho' the Master send his Servant the next Day to receive such Bill. *R. Mod. Ca. 36, 7.*

So, if a Bill or Note be given and received, generally, for a Debt, it will not be a Payment, if the Goldsmith fails before the Money paid; tho' the Goldsmith continues to pay for all the same Day: For he, who takes it, is not bound to receive it immediately, but shall have a reasonable Time for it. *R. Sal. 442.*

So, if a Bill be given, generally, upon *B.* a Goldsmith about ten in the Forenoon upon *Saturday*; and the Receiver sends all his Bills that Day received by his Servant, who receives several Sums upon them, and enters them; and then it was five in the Afternoon, after which Time it is not usual for Goldsmiths to pay upon a *Saturday*, for then they adjust their Accounts, for which Reason he does not send the Bill to *B.* by a Servant till Ten on *Monday Morning*; and *B.*'s Cashier cancels the Bill, and directs the Servant to come half an Hour afterwards; but then, and upon two subsequent Demands does not pay, but in the Afternoon upon *Monday* gives another Bill of the same Date and for the same Sum, at which Time he was a Bankrupt: This Bill will not be Payment, tho' the Servant was in Fault, that he did not stay to receive the Money when the Bill was cancelled. *R. Eq. Ca. * 60.*

• 2d Part of
2 Mod. Ca.

[The common Usage in transacting Affairs of this Nature is to be chiefly regarded; so where it is the Custom of a Company (as it was of the *Bank*, and of the *Sword-Blade Company*) to send their Servant in the Morning to leave the Notes, and to call for the Money in the Afternoon, if the Goldsmith has stopt Payment after the Notes left, it is not Payment. *Turner v. Mead, coram Pratt C. J. H. 7 G. Str. 416. Contra Hayward v. The Bank of England, coram King C. J. P. 9 G. Str. 550.*]

M E R C H A N T.

[A Banker's Note paid after Dinner, and refused Payment next Morning at Nine, is not Payment. *Fletcher v. Sandys*, H. 19 G. 2. Str. 1248.]

[If Defendant gives Plaintiff a Goldsmith's Note at Two in the Afternoon, and next Morning at Nine it is tendered, a Quarter of an Hour after they had stopt, it is not Payment. *Moore v. Warren*, and *Halme v. Barry*, H. 7 G. Str. 415.]

[If a Man receives a Goldsmith's Note at Twelve, puts it into the Bank at One, next Morning at Ten it is carried with others for 2600 l. and left as usual, called for at Eleven, and at Two Payment refused, but they pay small Notes for two Hours after; this is not Payment. *Hoare v. Du Cossu*, T. 3 G. 2. Str. 910.]

Feme Sole Merchant.

Vide Baron and Feme, (A. 2.)—*London*, (N. 7.)

Statute Merchant.

Vide Statute Staple.

M E S N E. (Writ of,)

Vide Droit, (K.)

M E S S U A G E.

Vide Grant, (E. 6.)

M E T R O P O L I T A N.

Vide Administrator, (B. 3, 4.)—*Archbishop*.—*Ecclesiastical Persons*, (C. 1.)—*Visitor*, (A. 5.)

M I L K.

(*Vide Dismes*, H. 8.)

M I L L.

Vide Dismes, (H. 12.)

Secta ad Molendinum.

Vide Droit, (H.)

M I N E S.

Vide Waife, (H. 1, 2.)

M I S A D V E N T U R E.

Vide Action upon the Case for Misfeasance, (A. 4.)—*Justices*, (M. 19.)

MIS-

MISCONTINUANCE.

Vide Amendment, (I.)

MISDEMEANOR.

Vide Action upon the Case for Misfeasance.—Attorney, (B. 15.)—Courts, (P. 16.)—Justices of Peace, (B. 52, 62, 101.)—Leet, (L. 2, &c.)—Officer, (G. 14.—K. 3.)—Parliament, (G. 3.—L. 34, 35, 44.)—Pleader, (S. 46, 47.)—Prærogative, (D. 54.)

MISFEASANCE.

Vide Action upon the Case for Misfeasance.—Misdemeanor.—Pleader, (2 O.)

MISNOMER.

Vide Abatement, (E. 18, &c.—F. 17, &c.)—H. 22, 23.)—Pleader, (3 I. 7.)

MISPRISION.

Vide Justices, (N. 1, &c.)—Justices of Peace, (B. 2.)

Disposition of the Clerk.

Vide Amendment, (D. 1, &c.—E. 1, 2.—F.—G. 1, 2.—H. 3.—T. 1, &c.—V. 1, &c. and many other Places in the same Title.)

MISTAKE.

Vide Abatement, (G. 3.—H. 25, &c.)—Misprision.

MITIORI SENSU.

Vide Action upon the Case for Defamation, (F. 16, &c.)

MITTIMUS.

Vide Certiorari, (A. 2.)

MODUS DECIMANDI.

Vide Dismes, (E. 10, &c.)—Prohibition, (G. 10.)

MOLLITER MANUS IMPOSUIT.

Vide Pleader, (3 M. 16.)

MONASTERY.

(A) How dissolved.

BY the *St. 27 H. 8. 28.* All Monasteries, and other Religious Houses of Monks, Canons, or Nuns of whatever Habit, Rule, or Order, not having Lands, &c. or other Hereditaments above 200*l. per Annum*, and all their Manors, Lands, &c. and Hereditaments, the King shall have and enjoy to him and his Heirs for ever.

And all Monasteries, Abbeys, &c. given to his Majesty by any Abbot, &c. under the Convent Seal within a Year, or otherwise suppressed and dissolved: And all Goods, Debts, &c. belonging to the Chief Governor in Right of his House, *1 Mar. 1535*, or since.

And the King shall be in actual Possession, &c. and may dispose of them at his Will and Pleasure.

And Patentees, &c. shall enjoy, &c. according to Tenor of their Letters Patent.

And all fraudulent Estates in Fee, Tail, for Life, or Years, or Charges, &c. within a Year before, shall be void.

And by this Statute Appropriations to a Religious House are also given to the King. *R. per 3 J. 2 Cro. 608.*

So, by the *St. 31 H. 8. 13.* The King shall enjoy to him and his Heirs, all Monasteries, &c. Colleges, Hospitals, and other Religious and Ecclesiastical Houses, since *4th Feb. 27 H. 8.* dissolved, given up, or by any Means come to the King. And all their Manors, Lands, &c. and other Hereditaments, or which shall hereafter be dissolved, &c.

By this Act all Religious and Ecclesiastical Houses of whatever annual Value were given to the King. *2 Co. 49.*

And tho' by the *St. 32 H. 8. 24.* The Corporation of the Knights of St. John of Jerusalem in England was dissolved, and their Hospital and all Manors, Lands, &c. given to the King, yet their Possessions were given to the King within the *St. 31 H. 8. 13.* For it was a Religious and Ecclesiastical Corporation. *R. per 3 J. Jon. 183.*

By the *St. 1 Ed. 6. 14.* All Colleges, free Chapels, and Chauntries, and all Manors, Lands, &c. or Hereditaments belonging to them, or which have been given or assigned to the finding of a Priest, or of any Anniversary or Obit, &c. to have Continuance for ever, shall be in the Possession and Seisin of the King.

If a Monk now be professed beyond Sea, he may inherit in England. *Dub. Ca. Eq. * 55.*

Vide Hospital.

* 2d Part of
2 Mod. Ca.

MONY.

(A) The Advantage of Money.

MONETA est Mensura Rerum, per quam omnium Rerum, quæ in Mundo sunt, fit justa Æstimatio. *Dav. 19.*

(B) What shall be Current Money.

(B. 1.) What Weight it ought to have.

SIX Circumstances ought to concur to make lawful and current Money: A fixt Weight, Alloy, Impression and Valuation, the King's Authority, and Proclamation. *Dav. 19. b.*

And therefore, every Piece of Current Money ought to have a certain Weight. *Ibid.*

The Pound Troy of Gold is divided into 24 Carats, and every Carat contains 4 Grains of Gold. *Affay for Amendment of the Coin 17.*

A Pound Troy of Silver is divided into 12 Ounces, every Ounce contains 20 Pennyweights, every Pennyweight 24 Grains. *Effay 18.*

Payment in the *Exchequer* was antiently made *ad Scalum*, or *ad Pensum*, viz. by Weight: Payment *ad Scalum* was, when 6d. was added to every 20s. to make due Weight; *ad Pensum*, when every Thing necessary to make due Weight was supplied, tho' above 6d. *Mad. 187. Hale Sb. Accounts 21, &c.*

(B. 2.) What Alloy.

GOLD and Silver were antiently coined without Alloy.

But now they have a certain Proportion of Alloy, whereby it is called *Sterling* or *Standard* Money. *Eff. for Coin 17. Hale Sb. Acc. 5. Hard. 501.*

The antient Standard for Gold *Temp. Ed. 3. usqu. H. 8.* was, in every Pound Troy 23 Carats 3 Grains $\frac{1}{4}$ of Gold and $\frac{1}{4}$ Grain of Alloy. *Eff. 20. Hale Sb. Acc. 10.*

The Standard for Silver was antiently, and is now, in every Pound 11 Ounces and 2 Pennyweights of Silver, and 18 Pennyweights of Alloy. *Ibid.*

The Sovereigns of Gold, Angels, &c. 34 H. 8. had in every Pound 1 Carat of Alloy, and 37 H. 8. Sovereigns 4 Carats, but 4 Ed. 6. they were reduced to the antient Standard. *Eff. 22.*

So 6 Ed. 6. 1 Mar. 2 El. Sovereigns and Angels were of the antient Standard, other Coin of Gold had two Carats Alloy. *Eff. 24.*

So 43 El. Angels, 3 & 10 Jac. 2 Car. 1. and 12 Car. 2. Rials and Angels were of the antient Standard. *Eff. 25, 26.*

But other Coin of Gold, 35 and 43 El. 2 Jac. 2 Car. 1. 12 Car. 2. Unites, &c. and 22 Car. 2. Guineas were and now continue with 2 Carats of Alloy. *Eff. 25, &c.*

So Coin of Silver had 34 H. 8. 2 Ounces of Alloy; 36 H. 8. 6 Ounces; 37 H. 8. 8 Ounces; and 5 Ed. 6. 9 Ounces; but 6 Ed. 6. were reduced to 19 Pennyweights of Alloy, and *Temp. Pb. & M.* to the antient Standard, which has continued from that Time to this. *Eff. 23.*

Antiently, if Money was paid at the *Exchequer*, it was examined or an Assay made of it, by burning some Part. *Mad. 187, 192.*

Or 12d. was added to every 20s. to countervail such Assay. *Mad. 192.*

So when Coinage was used, viz. *Temp. Ed. 3. 12d.* in every 20s. viz. 105l. was paid in respect of the Alloy in *Sterling* Coin for every 100l. Rent in fine Silver, and it seems to have been settled by Parliament. *Hard. 501.*

If the Alloy exceeds the due Proportion, whereby the Coin is debased, that tends to the Detriment of the Publick. 3 *Rush. 1217.*

(B. 3.) Ought to have an Impression.

SO Money ought to have an Impression; for Metal is not Money without an Impression: *Et dicitur Moneta quia Impressionem monet, cujus fit Moneta. Dav. 19. b.*

(B. 4.) And a fixt Denomination or Value.

SO every Piece of Gold or Silver Coin ought to have a certain Denomination, or Valuation set upon it. *Dav. 19. b.*

And the King by his Prerogative may set upon his Coin what Value he pleases. *Dav. 20. a. Vide Post, (B. 5, &c.)*

The Pound Troy of Gold, 18 Ed. 3. was divided into fifty Florins to be current at 6s. each, and afterwards *eodem Anno* ought to contain in it thirty-nine Nobles and an half, at 6s. 8d. the Noble. *Eff. for Coin 35.*

20 Ed. 3. it was divided into 42 Nobles of the same Value; 27 Ed. 3. 45 Nobles; 9 H. 5. 50 Nobles. *Eff. 36.*

1 H. 6. it was advanced to 45 Rials of 10s. the Rial, or 67 Angels and $\frac{1}{2}$ of 6s. 8d. the Angel, but reduced 4 H. 6. to the same Standard as 9 H. 5. yet 49 H. 6. and afterwards, 5 Ed. 4. advanced as before. *Eff. 38.*

1 H. 8. it was divided into 24 Sovereigns at 22s. 6d. or 48 Rials at 11s. 3d. or 72 Angels at 7s. 6d. *Eff. 41.*

34 H. 8. it was divided into 28 Sovereigns; and 36 H. 8. into 30 Sovereigns at 20s. per Sovereign; 3 Ed. 6. into 34 Sovereigns; and 6 Ed. 6. into 24 Sovereigns at 30s. per Sovereign, or 72 Angels at 10s. and 43 El. into 73 Angels. *Eff. 43.*

The Pound which had 2 Carats Alloy was divided 6 Ed. 6. and 2 El. into 33 Sovereigns at 20s. per Sovereign; and 43 El. into 33 $\frac{1}{2}$; and 2 Jac. into 37 Unites at 20s. and 1 Thistle Crown at 4s. *Eff. 48.*

The Pound of the antient Standard 3 Jac. was divided into 81 Angels; 10 Jac. * and 2 Car. into 89 Angels; and the Pound of 2 Carats Alloy 10 Jac. * [Into 88. Angels.] was divided into 37 Unites at 22s. and 1 Thistle Crown at 4s. 4d. and 2 Car. 1. into 41 Unites at 20s. *Eff. 53.*

The Pound was divided 22 Car. 2. and still continues, into 44 Guineas and an Half, at 20s. the Guinea. *Eff. 55.*

The Pound Troy of Silver 28 Ed. 1. was divided into 20s. and 3d. 20 Ed. 3. into 22s. 6d. 27 Ed. 3. into 25s. 9 H. 5. 30s. 1 H. 6. 37s. 6d. which was reduced to 30s. 4 H. 6. but 49 H. 6. advanced to 37s. 6d. and 1 H. 8. to 45s. 34 H. 8. 48s. 3 Ed. 6. 72s. but 6 Ed. 6. it was reduced to 60s. and 43 El. advanced to 62s. and so from thence hath continued. *Eff. 34, &c.*

The Penny was 20^a Pars Unciæ; 9 Ed. 3. 26^a Pars; 2 H. 6. 32^a Pars; 5 Ed. 4. 40^a Pars; 36 H. 8. 45^a Pars; 2 El. 60^a Pars; and so remains to this Day. *Hale Sb. Acc. 12.*

(B. 5.) The Authority of Coinage belongs to the King.

BY the Civil Law, *Jus cudendæ Monetæ ad solum Principem de Jure pertinet.* *Dav. 20.*

So, by the Common Law, the Power to make or coin Money within his Dominions belongs only to the King. *R. Dav. 19. a. Hale Sb. Acc. 3.*

But by a Grant from the Emperor, the Inferior Princes and States of Germany have the Privilege of Coining. *Dav. 20. b.*

And the same Privilege was granted to several Great Personages in France. *Ibid.*

So, antiently, the Archbishop of York, and Bishop of Durham might coin. *Ibid.*

So Temp. Steph. thro' the Confusion of the Times, *tam Episcopi quam Comites et Barones suam faciebant Monetam.* *Hale Sb. Acc. 4.*

[By 12 G. 2. c. 5. 15,000 l. per Annum is given to the King for seven Years, for the Coinage; made perpetual, by Stat. 9 G. 3. c. 25.]

[Stat. 14 G. 3. c. 70. directs the taking of light Gold Coin, under certain Regulations, and recoinng the same.]

(B. 6.) The King may make Coin current.

So the King by his Proclamation may make any Coin Current in *England*.
5 Co. 114. b.

As, a Talent or Bezant of uncertain Value, and may set a Value upon it.
Dav. 20. a.

May establish the Standard as he pleases. *Dav. 19. b.*

So Coin impressed at the Mint shall be of Value proportionable to other Coin,
 without Proclamation. *Per Holt Sal. 446.*

(B. 7.) And change it at his Pleasure.

So the King may enhance, debase, or change the Coin at his Pleasure. *Dist.*
 that he cannot change it without Assent of the Counties. *Mir. Jus. 10. b.*
2 Rol. 166. l. 35.

But it is now allowed, that he may change it as he pleases. *R. Dav. 20. b.*

That he may advance the Value. *Vide Ante, (B. 4. 6.)*

So he may debase it at his Pleasure. *Dav. 21.*

And if the King by Proclamation makes a mixt or base Money Current, it
 shall be so. *R. Dav. 22. b.*

So the King by his Proclamation may change, &c. his Money in *Ireland*, as
 well as in *England*. *Dav. 21.*

(B. 8.) The Effect of the Change.

If the King by Proclamation decries any Coin, it cannot afterwards be ten-
 dered as Money, but shall be only Bullion. *Dav. 20. b.*

If he makes base Money Current, it shall be taken as Sterling. *R. Dav. 22.*
b. 25.

And therefore, if an Obligation be to pay so much in Current Money at
 such a Day, and before the Day the Money be enhanced by Proclamation, Pay-
 ment or Tender of the Sum in the enhanced Money is sufficient. *R. Dav.*
26. b.

Tho' the Obligation was made in *England*, for Payment in *Ireland*, and the
 Money is enhanced there only; for the Time and Place of Payment shall be
 principally regarded. *R. Dav. 25. b. 27, 28.*

Tho' the Money was tendred after the Day of Payment, and before the En-
 hancement; for there was a Default by not tendering it at the Day. *Semb.*
Dy. 83. a.

So, if an Obligation be to deliver so much Corn, which before the Day is
 diminished in Value. *Dy. 82. in Marg.*

But if Money be tendred in pure Coin at the Day, and afterwards the Money
 is debased, he shall have the Value of the Coin current at the Time of the
 Tender. *Semb. Dav. 27. Dy. 82. b.*

Or, if one receives pure Coin, and is afterwards bound to a Restitution.
Dub. Dav. 27. b.

So, if a Receiver, who ought to pay upon Request, receives pure Coin,
 which, before the Request, is enhanced. *Per 2 J. Dy. 83. a. in Marg.*

So, if *A.* draws a Bill of Exchange to pay 100 *Rees* Dollars to *B.* in *Portu-*
gal at such a Day, and before the Day, after the Bill drawn, the King of *Por-*
tugal enhances the *Rees*; if the *Rees* are not paid, as Current at the Date of
 the Bill, *B.* may protest the Bill, and resort to the Drawer: For a foreign
 Prince cannot alter the Property of a Subject of *England*. *R. Skin. 272.*

Vide Abatement, (D. 8.)

Penalty for counterfeiting Money, or bringing false Money into the Kingdom.

Vide Justices, (K. 7.)

Money decreed in Specie.

Vide Chancery, (4 W. 10, 16.)

Bringing Money into Court.

Vide Pleader, (C. 10.)

M O N K.

Vide Ecclesiastical Persons, (B. 2, &c.)—Monastery.

M O N O P O L Y.

Vide By-Law, (B. 3.—C. 3.)—Trade, (D. 4.)

MONSTRANS DE DROIT.

Vide Prærogative, (D. 81, 82.)

MONSTRANS DE FAITS.

Vide Pleader, (O. 1, &c.)

MONSTRAVERUNT.

Vide Antient Demesne, (H.)

M O N T H.

Vide Ann, (B.)

M O N U M E N T.

Vide Cemetery, (C.)

MORT D'ANCESTOR.

Vide Affise, (C. 1, &c.)

M O R T G A G E.

(A) Mortgage ; By Pledge of Goods.

A Mortgage, *quasi mortuum Vadium*, is when Things moveable or immoveable, as Goods or Lands are pledged, as a Security for Repayment of Money. *Co. L. 205. a. Blo. Nom. Verb. Mortgage.*

If Goods are pledged for the Security of Money, the Pawnee has a special Property in them. *Sal. 522. R. Ow. 124.*

If the Custody of the Goods is a Charge to him, he may use them as a Recompence for his Charge: As, he may ride an Horse put in Pledge. *Sal. 522. R. per 3 J. Ow. 124.*

So, tho' the Custody be no Charge, if the Using is no Prejudice to the Goods, he may use them, but it shall be at his Peril if he loses them. *Sal. 522. Ow. 124.*

If a Cow be pledged, he may milk her. *Ow. 124.*

So, if the Pawnee lose the Goods without any Default in him, it shall be the Loss of the Owner, and the Pawnee shall have an Action against him for the Money. *Sal. 522. Vide Post, (B.)*

So the Pawnee has such a Property as he may assign to another. *Ow. 124.*

But by Tender of the Money, his Property is determined, and the Pledge ought to be restored. *Sal. 522, 3. R. 2 Cro. 245. Yel. 178.*

And if he refuses to restore the Pledge upon Tender of the Money, *Trover* lies against him. *Sal. 522. R. 2 Cro. 245. Vide Action upon the Case upon Trover, (D.)*

So he may be indicted; for perhaps it was delivered in Secret without Witnesses. *Per Holt 1 Sal. 522.*

So, if the Pawnee be robbed of the Goods after Tender, he shall answer for them. *Sal. 523.*

So, if he loses them by his Using them. *Sal. 522.*

So, if the Using be a Prejudice, he cannot use them. *Ibid.*

So, if a Pawnee assign the Goods pledged to another, *Detinue* lies by the Owner, if he detains them after the Money tendered to him. *Ow. 124.*

So Goods pledged cannot be taken in Execution for the Debt of the Pawnee. *Ibid.*

[Where Money is generally lent on a Pledge, it does not deprive the Lender of his Remedy against the Person, unless a special Agreement to stand to the Pledge only. *South-Sea Company v. Duncomb, M. 5 G. 2. Str. 919.*]

[A Ship at Sea may be mortgaged, and if Mortgagee takes proper Methods to get it in Possession, as Bill of Sale, &c. it will not be within *Stat. Ja. 1.* otherwise, if he suffers the Ship to go on another Voyage. *Ex parte Matthews, P. 1751. 2 Vezey 272.*]

(B) At what Time it shall be redeemed.

IF a Man pledge Goods for Money lent, he may redeem tho' he does not come at the Day fixt for Payment.

So, if no Day be appointed for Payment, he may redeem at any Time. *2 Cro. 245.*

So, if the Pawnee die, he may tender the Money to his Executor, or Administrator. *2 Cro. 245. Yel. 178. 1 Bul. 29.*

So, if he that pledges dies, his Executor or Administrator may tender the Money. *Dub. 2 Cro. 245;* for it was said, that the Condition is Personal, and it ought to be redeemed during his Life. *Yelv. 178. 1 Bul. 29.*

If a Day be appointed for Redemption, and he that pledges dies before, his Executor may redeem. 1 *Bul.* 29.

If a Man that pledges Goods be attainted, the King upon Payment may redeem. *Yel.* 179. 1 *Bul.* 29.

If a Man pledges Goods to *A.* and in his Sickness his Wife with his Consent delivers the Goods to *B.* and if after the Death of *A.* the Money be tendered to his Executor, and *B.* afterwards refuses delivering them, *Trover* lies against him; for *B.* had the Custody only, and not any Property. *R. 2 Cro.* 244. *Yel.* 178. 1 *Bul.* 29.

So, if the Goods are delivered to *B.* upon Consideration; for *B.* was not privy to the Delivery upon the first Contract, or to the Condition. *Yel.* 178. But by 1 *Bul.* 29. it seems as if then the Tender ought to be to *B.*

If a Man pledges Goods perishable, and does not redeem them till they are perished, (no Time being fixt for the Redemption,) Debt lies for the Money. *Per Ch. J. and not denied by the Court.* *Yel.* 179.

So, if the Pawnee lose them without his Default. *Sal.* 522.

Mortgage of Land; What shall be, and how redeemable.

Vide Chancery, (4 A. 1, &c.)

M O R T M A I N.

Vide Capacity, (B. 2, 3.)

M O R T U A R Y.

Vide Prohibition, (G. 11.)

M U L I E R.

Vide Bastard, (F.)

M U R A G E.

Vide Toll, (A.)

M U R D E R

Vide Admiralty, (E. 1.)—Justices, (M. 1, &c.—Y. 5.)

MUTUAL AGREEMENTS.

Vide Pleader, (C. 53, 54, 55.)

MUTUAL REMEDIES.

Vide Pleader, (C. 56.)

NAME.

N A M E

Vide Abatement, (E. 18, &c.—F. 17, &c.)—*Capacity*, (B. 4, 5.)—*Fait*, (B. 1.—E. 3, 4.)—*Fine*, (E. 4.)—*Franchises*, (F. 9.)—*Grant*, (A. 2.—E. 1, &c.)—*Parliament*, (A.)—*Process*, (A. 2.)

N A T I V O H A B E N D O

Vide Villenage, (C. 1.)

N A T U R A L I Z A T I O N

Vide Alien, (B. 2.)

N A V I G A T I O N

(*Vide Parliament*, (H. 25.)

(A) The Sea.

Vide Admiralty.

NAVIGATION is used upon the Sea, or navigable Rivers.

The Sea is, where the Water flows and reflows, and is so spacious, that a Man cannot see Land from one Shore to the other. 2 *Rol.* 169. l. 20.

The King has the Property *tam Aquæ quam Soli*, and all Profits in the Sea, and all navigable Rivers. *Cal.* 17. *Dav.* 56, 57.

The Jurisdiction and Interest of the King extends over the whole Sea between Britain, and Ireland. 3 *Leo.* 73.

So, between Britain, and France. *Ibid.*

So, to the Middle of the Sea between Britain, and Spain. *Ibid.*

So the Property of the Soil in all Rivers, which have the Flux and Reflux of the Sea, belongs to the King, and not to the Lord of the Manor adjoining, without Grant or Prescription. 1 *Sid.* 148, 9.

So the Soil between High-water-Mark, and Low-water-Mark, is Part of the County, and may be within a Manor. *Semb.* 1 *And.* 89.

As to Fishery in the Sea, or Rivers. *Vide Prærogative*, (D. 50.)—*Piscary*, (A.)

As to the Sovereignty of the Sea. *Vide Prærogative*, (B. 1.)

(B) An Arm of the Sea.

AN Arm of the Sea is, where the Sea flows and reflows. 2 *Rol.* 169. l. 12.

And every Arm of the Sea, or navigable River so high as the Sea flows and reflows, belongs to the King, and he has the same Property therein as *in alto Mari.* *Dav.* 56. 2 *Rol.* 170. l. 20.

But, by Grant, or Prescription, a Subject may have the Interest in the Water and Soil of navigable Rivers; as, the City of London has the Soil and Property of the Thames, by Grant. *R. Dav.* 56. b.

(C) A Creek.

A CREEK is an Inlet of the Sea, extending within the Land, which gives no Harbour to Ships, nor is endowed with any Privileges. *Cal.* 34. (D)

(D) An Haven.

AN Haven is an Harbour for Ships; but it is not necessary, that it should have Privileges annexed to it. *Cal. 34.*

All Havens and Ports are *infra Corpus Comitatus*. *4 Inst. 148.*

And the Water, Banks, &c. within Ports and Havens, are within the Power of the Commission of Sewers. *Cal. 38.*

[By *Stat. 19 G. 2. c. 22.* Ballast shall not be thrown out into any Haven, Port, Road, Channel or navigable River, but only on Land where Tide or Water never flows or runs, on pain of from 5 *l.* to 50 *s.* before one Justice.]

[If a Ship is sunk or stranded, the Owner shall give Security to remove it, or one Justice may sell it, and with the Money remove it, and render the Surplus to Owner.]

[Putting Ballast into a Hopper, with an Intent to have it carried into the high and open Sea, and its being thrown into the Sea at fourteen Fathom deep, is an Offence against *19 G. 2. c. 22.* *Brucklesbank v. Smith. M. 32 G. 2. 2 B. M. 656.*]

[By *Stat. 9 G. 3. c. 30.* If any Ship, not in the King's Service, is fastened to the King's Moorings, or Ships, or so as to be liable to bear against King's Ship, the Person commanding on Board forfeits 10 *l.* King's Officer may remove the Ship.]

[The Duty by *22 G. 2. c. 40.* for *Ramsgate* Harbour is not payable by Ships passing on the back of the *Goodwins*, and not thro' the *Downs.* *Matson v. Scobel, M. 9 G. 3. 4 B. M. 2258.*]

Vide Post, (E.)

(E) A Port.

PORTUS est Locus, in quo exportantur, et importantur Merces. *4 Inst. 148.*

Every Haven and Port of Common Right belongs to the King. *Dav. 56.*

And a Grant to the Subject is not good; for a Subject cannot have it. *1 Rol. 5.*

Every Port is an Haven for Ships, which enjoys several Privileges by Prescription, or the King's Grant. *Cal. 34.*

By the *St. M. Ch. 9. Barones de 5 Portibus, et omnes alii Portus habeant omnes Libertates, et Consuetudines suas.*

A Port has usually a Port-reeve, and Portmote. *4 Inst. 148.*

By the *St. 1 El. 11.* No Wares, &c. shall be exported or landed, unless Fish and Salt, but at some open Place, Key, or Wharf, as by Commission shall be appointed, &c.

And by the *St. 13 & 14 Car. 2. 11.* A Commission out of the *Exchequer* shall go from Time to Time to assign such Ports for Landing or Shipping Goods, &c. and to appoint the Limits of such Port, &c. And none shall ship any Goods or land them, Fish, Coal, Stone, or Bestials except, but at such Port, &c.

(F. 1.) Islands.

AN Island is defined by the Imperial Law to be, *Locus undique circumdatus Aquis.* *Cal. 20.*

(F. 2.) Isle of Man.

The Isle of *Man* was antiently governed by it's own King, who was Subject to the King of *England.* *Cal. 20. 4 Inst. 283. 7 Co. 21. a, Calvin.*

And being a Kingdom of itself, is no Part of the Realm of *England.* *4 Inst. 201, 283. R. 40 El. 4 Inst. 284.*

But the Lord of this Isle is called King, and has a Crown of Gold. *4 Inst. 283.*

Anno 18 Ed. 1. it was granted to *Walter de Huntercomb*; by *Ed. 2.* to *P. Gaveston*; and afterwards to *H. de Bellomonte.* *4 Inst. 284.*

A. D. 1393. 17 R. 2. William Lord Scroop purchased it of W. Ld. Montacute. 4 Inst. 283.

1 H. 4. Wm. Ld. Scroop forfeited it for High Treason, and the Forfeiture was confirmed by Act of Parliament. 4 Inst. 283.

And afterwards H. 4. by Letters Patent granted *Insulam, Castrum, Pelam et Dominium de Man*, and all Isles belonging thereto, to Hen. E. of Northumberland and his Heirs. 4 Inst. 283.

And when, by the Attainder of Hen. E. of Northumberland, 5 H. 4. it came to the King, and was confirmed by Parliament, the King 7 H. 4. granted it *uncum Patronatu Episcopatus* to Sir John Stanly for Life, and afterwards, to him and his Heirs. *Ibid.*

Sir John Stanly was Grandfather to Hen. Lord Chamberlain to H. 6. and by him created Lord Stanly. *Ibid.*

Hen. Ld. Stanly was Grandfather to Thomas, created by H. 7. Earl of Derby, to him and the Heirs Males of his Body. 4 Inst. 283. 4.

And therefore, it shall be grantable by the King's Letters Patent. Co. L. 9. a. 4 Inst. 284. 2 And. 115, 116.

And when granted, it descends according to the Rules of the Common Law. R. 4 Inst. 284. Co. L. 9. a.

So the King by Patent may enable the Governor to make a Justice there. Pal. 345.

And the Construction of the Patent shall be determined by the Common Law. *Ibid.*

But no one has an Estate of Inheritance there, except the Lord, and the Bishop. 2 And. 116.

And the Bishop there is not created by *Congè d'elire*, but by Presentment of the King of Man. Pal. 345.

In the Kingdom of Man are 2 Castles, 17 Parishes, 4 Markets, and many Villages. 4 Inst. 283.

A Bishop was there appointed by Gregory 4th, who is subject to the Archbishop of York. 4 Inst. 285.

The Inhabitants have a peculiar Language. *Ibid.*

And are governed by their own Laws: By their Ecclesiastical Law they are cited, the Cause determined, and within eight Days they obey, or are imprisoned. 4 Inst. 285. 2 And. 116.

Every Contract shall be compleated *per Traditionem Stipulae*. 4 Inst. 285.

And this, upon a Contract for Lands, as well as for Personal Things; for the Parties appear in Court, declare the Contract, and deliver a Straw in Seisin, and the Contract is recorded.

A^o. 1583, by a Law in the same Isle, a Sale of Lands without Licence of the Lord, or his Council, or three of them, viz. his Lieutenant, Receiver, and Comptroller, shall be void, and each Party forfeits 3l. such Licence to be made by the Clerk of the Rolls, and to be under the Hand of the Council, or those three of them.

And now, tho' made *per Traditionem Stipulae*, if it be not with Licence, &c. it will be void. R. at a Court within the Isle 1611 inter Callow and Sir Hugh Cannel. R. 14 May 1641 inter Thompson and Callister.

But if made with Licence, &c. without *Traditionem Stipulae*, it will be void. So in the Isle of Man taking a Capon, or Pig, &c. will be Felony. 12 H. 8.

5. a. But not taking an Horle, or Ox; for they cannot hide them. *Ibid.*

An Act of Parliament in England does not bind them, unless they are expressly named. R. 4 Inst. 284. R. 2 And. 116. 4 Mod. 223

And therefore, the St. W. 2. *de donis* does not extend to them. R. 4 Inst. 284. Nor the St. 27 H. 8. 10. of Uses. 4 Inst. 284. 2 And. 116.

Nor the St. 32 & 34 H. 8. of Devises by Will. 4 Inst. 284. 2 And. 116.

So *Breve Domini Regis* does not run there: And therefore, a Wife cannot sue to be endowed there. 4 Inst. 284.

An Office upon a Death cannot be sued out of Chancery. *Ibid.*

Not

Nor any Office to intitle the King. 4 *Inst.* 284. 1 *Rol.* 246.

Yet the King by Commission under the Great Seal may seise Lands forfeited to him, which being returned upon Record, gives Seisin to the King. R. 4 *Inst.* 284.

So the King may grant a Commission for Redress of Wrong, but the Commissioners must proceed according to the Law there. 4 *Inst.* 285.

So an Appeal lies to the King from a Judgment there, *ut superiori Domino*. R. *coram Concilio* Jan. 1716, *inter Christian and Corrin*. Acc. *Vau.* 281.

So the Judges will take Notice of the Laws of the Isle of Man. Pal. 345.

So the Isle of Man appertains to the Crown of England, tho' it be not Parcel, nor held of it. Per Co. 1 *Rol.* 246.

[The Isle of Man is not Part of the Realm of England, but Parcel of the King's Crown of England, held as a feudatory Dominion, by liege Homage of the Kings of England. *Earl of Derby v. Duke of Athol*, T. 1751. 2 *Vezey* 337.]

[A Question relating to the Right and Title to the Isle of Man, may be determined in England, in Chancery, the King's Bench, or (2.) before the King in Council. *Earl of Derby v. Duke of Athol*, H. 1748. 1 *Vezey* 202.]

[By Letters Patent, 7 J. 1. a Grant was made by the Crown of the Isle of Man, and of all the Rectories and Tithes, by Name, to William Earl of Derby for Life, to his Wife for Life, to their Son James Lord Stanley in Fee, to be held of the King by liege Homage, rendering immediately after that Homage two Falcons, and so to his Successors every Coronation-Day two Falcons: This is a Socage Tenure, and (*semb.*) petty Serjeanty. *Earl of Derby v. Duke of Athol*, T. 1751. 2 *Vezey* 337.]

[By private Act of Parliament, 7 J. 1. William Earl of Derby, and his Wife for Life, and the longest Liver, then their Son James, and the Heirs Male of his Body, then Robert Stanley, and the Heirs Male of his Body, then the Heirs Male of the Body of Earl William, then the Right Heirs of James Lord Stanley, shall hold against the King, &c. and against the Widow and Daughters of Earl Ferdinand (Earl William's elder Brother) all the Isle of Man, with the Appurtenances: and neither James, nor the Heirs Male of his Body, nor Robert, nor the Heirs Male of his Body, nor any of the Heirs Male of William, shall have Power to alien it, but it shall continue as above limited; only they may make Leases, as Tenants in Tail may do in England, by Stat. H. 8.]

[In 1666, Charles Earl of Derby makes a Lease for 10,000 Years, of the Rectories and Tithes in Man for the Benefit of the poor Clergy; and by Deed, as collateral Security, conveys Lands in Lancashire, in Trust to permit him and his Heirs to hold said Lands, and receive the Rents, till Interruption in Receipt of the Rectories and Tithes by him or those claiming under him or his Ancestors, and then to enter and receive.]

[In 1735, James Earl of Derby (Heir-male of James Lord Stanley, in the Grant and Act mentioned) devises to Sir Edward Stanley (who on his Death became Earl of Derby, and his Heirs for ever, all his Honours, real Estate and Hereditaments, whatsoever and wheresoever.)

[In this James ended the Male-line of Earl William.]

[The Devise in 1735 was void, by Force of the private Act of Parliament, whereupon the Isle of Man descended to James Duke of Athol, as right Heir of James Lord Stanley, (afterwards Earl of Derby, beheaded at Bolton in Lancashire in 1651) being his great Grandson by Charlotte his third Daughter.]

[The Lease of the Rectories and Tithes was also void, and the Trustees were intitled to the Rents of the Lands in Lancashire, from the Time the Tithes were evicted by the Duke of Athol. *Ibid.*]

[By Stat. 5 G. 3. c. 26. In Consideration of 70,000 l. to the Duke and Dutchess of Athol, the Island, Castle, Pele, and Lordship of Man, and all Royalties, &c. are unalienably in his Majesty; except the Land-property Rights, as Lord of Manors, Patronage of Bishoprick, &c.]

[By Stat. 5 G. 3. c. 30. Bounties on Corn exported from Britain or Ireland to Man, are discontinued.]

- [Stat. 5 G. 3. c. 39. provides against Smuggling with the *Isle of Man*.]
 [Stat. 5 G. 3. c. 43. permits Importation of several Commodities of *Man*, and grants Bounties on Linens made in *Man*, and exported from *Britain*.]
 [Stat. 6 G. 3. c. 50. extends the Act 29 Car. 2. relating to taking Affidavits in the Country, to the *Isle of Man*, and impowers the King to appoint Ports therein for landing and shipping Goods.]
 [Stat. 7 G. 3. c. 45. encourages and regulates the Trade and Manufactures of *Man*.]
 [Stat. 11 G. 3. c. 52. provides for repairing the Harbours in *Man*.]
 [Stat. 12 G. 3. c. 58. is for encouraging the Herring-Fishery of *Man*.]

(F. 3.) *Jersey*.

The Islands of *Jersey* and *Guernsey* were Parcel of the Duchy of *Normandy*, and with that united to the Realm of *England* by H. 1. after the Conquest of Robert his Brother. 4 *Inst.* 286.

And tho' *Normandy* was lost by King *John*, and afterwards the Loss confirmed by H. 3. yet these Islands continue Part of the Dominion of *England*. 4 *Inst.* 286.

Jersey antiently was *Gearsy*, olim *Cæsarea*. *Ibid.*

And had Temp. *Jac.* 12 Parishes and 4 Castles. 4 *Inst.* 287.

But these Islands are not Parcel of the Realm of *England*. 7 Co. 21. a. *Calvin*. It seems to be meant that they were not so originally. *Cont. Seld. de Ma. Cl. 4 Vol. 1351. Acc. App. H. Jer. 440.*

Jersey is governed by it's own Laws and Customs. 7 Co. 21. a; *Calvin*.

And the King's Writ does not run there. 4 *Inst.* 286.

The usual Way of Proceeding there is according to the Customs of *Normandy*. *Ibid.*

But King *John* constituit 12 Coronatores ad Placita et Jura Coronæ conservanda, et concessit quod Ballivus per Visum Coronator placitare sine Brevis poterit de Assisa Novæ Disseisinæ, de Morte Antecessor, et de Dote, infra Annum. 4 *Inst.* 286. *App. H. Jer. N. 1.*

The twelve Coroners are elected by the Country upon Death, and sworn and ought with the Justices, or (if they are absent) by themselves, *Judicare de omnibus Casibus in Insulâ emergentibus* (exceptis nimis arduis, as High Treason, &c.) *Amerciamenta taxare, &c.* *App. ibm.*

Placitum insulâ coram aliquibus Justis inceptum non debet extra Insulam adjournari. *App. ibm.*

Nullus de Tenemento quod per Annum et Diem quiete tenuit, sine Brevis de Cancel respondere teneatur. *App. ibm.*

Nullus debet imprisonari in Castro, nisi in Causa Criminali, et hoc per Judicium Coronator Jurat. *App. ibm.*

So a Commission and Grant of the King under the Great Seal has it's Force there. 4 *Inst.* 286.

[The royal Court of *Jersey* cannot transmit a Cause to the King for Difficulty, but must proceed to Judgment. *Magoons v. Dumaresque*, M. 13 G. Ld. *Raym.* 1448.]

The King granted the Isle, Royalty, and Government there. *Vide App.*

The King grants the Office of Bailly, that he shall not be named by the Governor. *Vide App.*

[By Stat. 9 G. 3. c. 28. *Jersey* and *Guernsey* may export to *America*, directly, Goods necessary for the Fishery; and import non-enumerated Goods, except Rum.]

(F. 4.) *Guernsey*.

So *Guernsey* was united with *Normandy* to the Crown of *England* temp. H. 1. and has so continued. 4 *Inst.* 286. *Vide Ante*, (F. 3.)

And has been governed as *Jersey* by it's own Laws. 4 *Inst.* 286.

(F. 5.)

(F. 5.) Isle of *Wight*.

The Isle of *Wight* is Part of the County of *Hampshire*, and governed by the Laws of *England*. 4 *Inst.* 287. *Cal.* 21.

(G) The Plantations.

(G. 1.) Their Government.

THE Plantations are Colonies of the Kingdom of *England*, which belong to the Crown and Kingdom, and are Part of their Dominion. *Ca. Parl.*

^{31.} The Inhabitants there are within the King's Allegiance, and subject to the Laws of *England*. *Ca. Parl.* 32. *Vide Ley*, (C.)

The King by his Letters Patent constitutes a Governor.

And he must act pursuant to Law.

And for Mifeasance shall be punished by Action at Law. *Adm. Ca. Parl.* 30.

So, if a Governor there makes a Provost-Marshal, or other Officer of Justice there, he may make a Deputy. 4 *Mod.* 222.

And upon the Deputation may reserve an Annual Rent with Covenants, &c. to pay, and it will not be within the *St.* 5 (or 5 and 6) *Ed.* 6. 16. against the Sale of Offices. *R.* 4 *Mod.* 222.

[Proprietors of Provinces may settle Boundaries between themselves: as the Lords Marchers and Counties Palatine might do. And this is not an Alienation, for these shall be presumed the true and ancient Limits. *Penn v. Lord Baltimore*, 1750. 1 *Vezey* 444.]

[They may alien to Natural-born Subjects. *Ibid.*]

[And if Part is aliened, the Tenure and Services will remain on the Whole, and may be exacted from either. *Ibid.*]

[Proprietors cannot prejudice Planters, &c. by their Agreement. *Ibid.*]

[By *Stat.* 4 *G.* 3. c. 15. and 8 *G.* 3. c. 22, Penalties and Forfeitures on Revenue-acts may be recovered in any Court of Admiralty or Vice-Admiralty having Jurisdiction where the Cause of Suit arises, and the Party may appeal from Court of Admiralty to Court of Vice-Admiralty.]

[*Stat.* 4 *G.* 3. c. 34. prohibits the Assembly of any Colony to make Paper-Bills of Credit a legal Tender. And *Stat.* 10 *G.* 3. c. 35. enables *New-York* to create Bills for 120,000 *l.* Currency, which shall be legal Tender for fourteen Years. And *Stat.* 13 *G.* 3. c. 57. authorises the Assemblies to make any Certificates voluntarily accepted by public Creditor, a legal Tender to the public Treasurer.]

[*Stat.* 6 *G.* 3. c. 12. declares the Plantations subordinate to, and dependant on, the Crown and Parliament of *Great Britain*; which has Power to make Laws to bind the Colonies and People of *America*, Subjects of the Crown of *Great Britain*, in all Cases.]

[*Stat.* 7 *G.* 3. c. 41. authorises the King to put the Customs, &c. and Execution of the Laws relating to Trade, under the Management of Commissioners to be resident there.]

[*Stat.* 7 *G.* 3. c. 59. prohibits the Governor, Council, and House of Representatives of *New-York*, from passing any Act of Assembly, till they conform to an Act of Parliament for furnishing the King's Troops with Necessaries.]

[By *Stat.* 14 *G.* 3. c. 19. The Harbour of *Boston* in *New-England* is shut up, till they make Satisfaction to the *East-India Company*, and Peace and Obedience to the Laws are restored.]

[By c. 29. Persons indicted of capital Offences in *Massachusetts-Bay* done in Execution of Law, or Suppression of Riots, shall be bailed by Judge, who shall postpone Trial till Defendant may apply to Governor, who may order him to be tried there, or in another Colony, or in *Britain*.]

[By c. 45. The Government of *Massachusetts-Bay* is regulated. The Council is to be nominated by the King (instead of being chosen by the Assembly as by Patent of 3 *W. & M.*) The Governor to appoint Judges and Sheriffs without Consent of Council. No Meeting in any Township without Governor's Consent, except for Election of Officers or Representatives, and no other Business but such Election to be then treated of, and at other Meeting only the Business specified in the Consent. Juries regulated, not to be elected by the Inhabitants, but returned by Sheriff. Court may grant special Jury to be struck by an Officer of Court. Repealed by *Stat. 18 G. 3. c. 11.*]

[By c. 83. The Boundaries of *Quebec* are settled, and the Civil Government settled by the King's Proclamation and Commissions, being found inapplicable to the Province, whose Inhabitants (above 65,000) were Papists, and had their own Form of Government, the Proclamation, Commissions, &c. are repealed. Papists there have the free Exercise of their Religion, subject to the King's Supremacy, as declared by 1 *Eliz.* and their Clergy may receive their Dues from Papists only. And out of the Remainder of such Dues, the King may make Provision for a Protestant Clergy.]

[Papists not to take the Oath of 1 *Eliz.* but to swear to bear Allegiance, and to discover Treasons.]

[All Civil Suits to be determined by the Laws of *Canada*, till altered by Ordinances of Governor and legislative Council.]

[This not to affect Lands granted in Socage.]

[Owners of Lands may leave them by Will.]

[Criminal Law of *England* to be continued, subject to the Alteration of Governor and legislative Council.]

[King may appoint Council; who, with Governor, may make Ordinances. They cannot lay Taxes, except for Buildings and Roads.]

Ordinances disallowed by the King void; touching Religion, or Punishments greater than Fine or three Months Imprisonment, of no Force till approved by the King.]

[King may erect Courts, and appoint Judges.]

[This does not affect former Acts made to regulate Commerce in *America*, all which extend to *Quebec*.]

[*Stat. 15 G. 3. c. 40.* permits carrying Spirits by Land-carriage into *Quebec* Province.]

(G. 2.) Courts.

In *Virginia*, by a Statute there 1662, c. 19. The Governor and Council shall hold a General Court thrice a Year, viz. 20 *March* for 18, 20 *September* and 20 *November*, for 12 Days each, and shall sit each Day from eight to eleven in the Morning, and from one to three in the Afternoon.

By *St. 1666, c. 3.* First Court shall begin 15 *April* instead of 20 *March*.

By *St. 1662, c. 31.* By Commission in each County, four most Judicious shall act as Justices of Peace, (*Qu. 1.*) according to the Laws of *England*, whose Courts shall be called County Courts, and each Justice not attending, unless just Cause, forfeits 300*l.* of Tobacco.

By c. 25. The Governor, and one or two of the Council commissioned by him, shall go the Circuit yearly in *August*, and determine all Causes then depending in the County Courts, provided no Counsellor go in the River where he inhabits.

By *St. 1662, c. 26.* General Court shall take Cognisance of no Cause under 20*s.* or 200*lb.* of Tobacco.

Causes under, any Justice may hear and determine.

The Action shall be entred, and by the *St. 1662, c. 32.* till then no Sheriff shall arrest, on Pain of 500*lb.* of Tobacco.

By c. 22 & 33. Plaintiff shall file a Declaration three Days at least before Hearing in the General and County Courts, to which an Answer shall be put in in Writing.

By *St. 1663, c.* On the Day for Hearing, the Plaintiff, upon Call, not appearing, shall be nonsuit, and the Defendant, upon Call, not appearing, shall have Judgment against him.

So, by *St. 1662, c. 4.* On *Non inventus* returned, Judgment shall be for what the Plaintiff swears due; so, against Bail.

By the *St. 5 G. 2. 7.* If a Suit depends in the Courts of Law or Equity in any of the Plantations for a Debt to the King, or Debt, or Account, where any residing in *Great Britain* is Party, the Plaintiff or Defendant, or a Witness to be made Use of, may prove any Matter by *Affidavit*, or if a Quaker by Affirmation, made before the Mayor, &c. of a Corporation, City, or Borough, which transmitted under the Common Seal or Seal of Office, shall be of the same Force, as if the Party was examined *viva voce*, &c.

And by the same Statute, Houses, Lands, Negroes, &c. in any of the Plantations, shall be liable to the Debt of the King, or any of his Subjects, and shall be Assets in like Manner as Real Estates to a Debt on Specialty, and shall be seized, sold, &c. as Personal Estates are in the Plantations.

[If a Party appeals from a Court in one of the Plantations to the Privy-Council, he must procure the Proceedings to be transmitted, and proceed within a Year after the Appeal allowed in the Plantations, or the Appeal will be dismissed with 5 *l.* Costs, without Notice to the Appellant. *Gordon v. Lowther*, *M. 13 G. Ld. Raym.* 1447.]

[The original Jurisdiction as to the Boundaries of Provinces in *America* is in the King in Council, but by the Contract of the Parties, as by executing Articles in *England*, the Courts in *England* may have Jurisdiction. *Penn v. Ld. Baltimore*, *P. 1750. 1 Vezey* 444]

(G. 3.) Laws.

The Laws of the Plantations are the same, by which they were governed before their Conquest, or Accession to *England*, except where new Laws are obtained since their Conquest. *R. 4 Mod.* 225. *Vide Ley, (C.)*

And if new Laws are given, their antient Customs, if not abolished, may remain. *4 Mod.* 225.

And therefore, a new Statute made since their Conquest, does not bind them, unless they are particularly named. *R. 4 Mod.* 225.

[*Stat. 4 G. 3. c. 15.* imposes Duties on several Species of Goods imported into *America*.]

[*Stat. 5 G. 3. c. 12.* is the *American Stamp Act*.]

[This was repealed next Sessions, by *Stat. 6 G. 3. c. 11*.]

[*Stat. 6 G. 3. c. 49.* opens certain Ports in *Jamaica* and *Dominica*, and regulates Duties to be paid.]

[*Stat. 6 G. 3. c. 52.* repeals certain Duties, and grants others, on various Goods, and regulates Trade there. This is amended by *Stat. 7 G. 3. c. 2*.]

[*Stat. 7 G. 3. c. 46.* grants certain Duties on Goods imported from *Britain* to *America*, and makes Regulations to prevent running Goods there. Repealed in Part by *Stat. 10 G. 3. c. 17*.]

[By *Stat. 13 G. 3. c. 14.* Aliens may lend Money, at 5 *l.* per Cent. on Lands in the *West-Indies*, and sue and recover the same, though their native Country is at War with this Kingdom. They may sue at Law on any Bond, collateral Security or Covenant, and also in the Court of Chancery of the Colony, praying a Sale for Payment, and have the same Remedy as a natural-born Subject, except that they cannot have Possession by Execution or Foreclosure.]

[Service on Foreigner's Agent in the Colony, or on himself in another County, good Service; if he does not appear, the Court may order Payment and Redemption.]

[*Stat. 7 G. 3. c. 46.* The *Tea Act* grants certain, &c.]

[Repealed as to the Duty on *Tea* by *Stat. 18 G. 3. c. 12*.]

[This *Stat. 18 G. 3. c. 12.* declares that the King and Parliament will not impose any Tax on *North America*, or the *West-Indies*, except such as may be expedient to impose for the Regulation of Commerce.]

(H)

(H) Beacons, &c.

FOR the Direction of Mariners, Beacons, Light-houses, and Sea-Marks are erected. 4 *Inst.* 148.

Before the Time of K. *Ed.* 3. Stacks of Wood were burnt to give Notice of the Approach of Enemies upon the Coast, and in his Reign, Beacons. 4 *Inst.* 148.

Light-houses are *Phari*, built for the Direction of Mariners in the Night. *Ibid.*

Sea-Marks are Steeples of Churches, Castles, Trees, &c. for their Direction by Day. *Ibid.*

By the Common Law, the King only could direct the erecting of any of these by his Commission under the Great Seal. *Ibid.*

But now the King, by his Letters Patent, grants a Power to the Admiral to erect. 4 *Inst.* 149.

And by the *St.* 8 *El.* 13. The Corporation of the *Trinity House* at *Deptford* may erect so many Beacons, and Sea-Marks on the Sea Coast, as to them shall seem meet. *Ibid.*

By Custom, a Customary Payment, called *Beaconage*, is due in many Places for the Maintenance of them. *Ibid.*

And a Prescription in the Cinque Ports to make Tallage for such Purpose, will be good. *R. Ray.* 448.

And an Order for it will be good, tho' it does not shew that they are in Decay. *R. Ray.* 449.

(I. 1.) Navigation shall be free.

AS to the Freedom of Trade, *Vide Trade*, (A. 1, &c.)

By the *St.* 18 *Ed.* 3. *St.* 2. c. 3. The Sea shall be open to all.

[*Stat.* 26 *G.* 2. c. 6. directs the Performance of Quarantine, the Manner, Penalties, &c.]

(I. 2.) But it shall be in *English* Ships, &c.

But by the *St.* 5 *R.* 2. 3. and 6 *R.* 2. 8. None shall import, or export Goods but in Ships of the King's Ligeance, (unless such Ships able and sufficient are not to be had) on Pain of Forfeiture of the Goods. *

* [The *St.* 5 *R.* 2, 3. is repealed by the *St.* 1 *El.* 13.]

By the *St.* 14 *R.* 2. 6. Merchants of *England* shall freight only Ships of the Realm, so as the Owners will take reasonable Gains.

† [The *St.* 23 *H.* 8. 7. is expired.]

By the *St.* 4 *H.* 7. 10. and 23 *H.* 8. 7. † Importing Wines in any but *English* Ships was prohibited: But the *St.* 4 *H.* 7. 10. is altered by the *St.* 5 & 6 *Ed.* 6. 18. and repealed by the *St.* 1 *El.* 13.

[*Expired.]

By the *St.* 5 *El.* 5. * None shall import Wine or Woad from *France*, but in a Vessel whereof a Subject is Owner, or Part Owner.

So, by the *St.* 1 *El.* 13. Revived by the *St.* 13 *El.* 15. *

By the *St.* 12 *Car.* 2. 18. No Goods shall be imported, or exported, into, or out of any Lands, Islands, &c. belonging, or which may belong, to the King, his Heirs or Successors, in *Asia*, *Africa* or *America*, but in such Ships as truly belong to the People of *England*, *Ireland*, *Wales*, or *Berwick*, or are of the Built of and belonging to such Lands, Islands, Plantations, &c. as the right Owners, and whereof the Master and three-fourths of the Mariners are *English*, on Pain of Loss of all the Goods and also the Ship, &c. One-third to the King, &c.

And by the *same Statute*, s. 3, 4. No Goods of the Growth or Manufacture of *Africa*, *Asia* or *America*, shall be imported into *England*, &c. but in such Ships, &c. And no Goods of foreign Growth or Manufacture, to be imported, &c. in such Ships, shall be shipped from any Places, but those of such Growth or Manufacture, or from such Ports, &c. where they only can, or usually are, first

first shipped for Transportation, on Pain of the like Forfeiture; one Moiety, &c.

Provided, not to extend, 1. To Goods or Commodities of the Streights, or *Levant* Seas, loaden in such Shipping from the usual Places of lading them in the Streights, or *Levant* Seas: Nor, 2. To *East India* Commodities loaden in such Shipping in any of those Seas Southward and Eastward of the *Cape Bona Speranza*, tho' not at the Place of the Growth: Nor, 3. To any Goods loaden in such Vessels from *Spain, Portugal, Azores, Madeira* or *Canary* Islands, of the Growth or Manufacture of any of those Places: Nor, 4. To Bullion, or Goods taken by Way of Reprisals, by such Ships having Commission from the King.

So, by the *St. 7 & 8 W. 3. 22. S. 2.* No Goods shall be imported to, or exported from any Colony or Plantation that is, or may be, the King's in *Asia, Africa, or America*, or carried from one Plantation to another, but by Ships, &c. belonging to the People of, and being of the Built of *England, Ireland*, or the Plantations, whereof the Master and three-fourths of the Mariners be of the same People, except Prizes, or by Contract with Commissioners, &c. for Maits, &c. on Pain of Forfeiture *ut supra*.

But if a foreign Ship be naturalized, Importation in it will be lawful.

So, if a foreign Ship be naturalized, and afterwards sold to a Foreigner, who resells it to an Englishman, it shall be used without taking the new Oath required by the *St. 12 Car. 2. 18. R. Hard. 511.*

So the Importation of Wine from *Spain*, or other Country in *Europe*, need not be in an *English* Vessel, or in which the Master and three-fourths of the Mariners are *English*. *Semb. Hard. 487, 8.*

[The Husks and Shells of Cocoa Nuts, separated from the Nut by Fire, is not a Manufacturing, but liable to the Act of Navigation. *Anon. H. 1725. Bunb. 212.*]

[Information of Debt will lie for Duties on *French* Wines imported from *Holland*, though they might have been seized as forfeited. *Attorney-General v. Jewers, M. 1726. Bunb. 225.*]

[On an Information for a Ship forfeited for bringing over Goods not of the Growth, &c. Notice in the Master is not necessary. *Per totam Curiam. Idle v. Vanbeck, P. 1727. Bunb. 230. Mitchel v. Torup, H. 6 G. 3. Parker 227.*]

[But a Distinction shall be made, whether the Goods were *Part or not Part of the Cargo*; and if Passenger privately brings over a *small Parcel*, it shall not be deemed Part of the Cargo, nor the Ship forfeited. *Semb. Greeby v. Palmer, H. 1733. Bunb. 232.*]

[If a Ship comes into Port on Pretence to refit, and the Sailors run Teas, it is a Forfeiture of the Ship, though she was seized and in the Possession of the Officers before the running. *Attorney-General v. Jackson, T. 1727. Bunb. 236.*]

[By 13 G. 2. c. 3. In Time of War, three-fourths of the Crews of Privateers or Merchant Ships may be Foreigners.]

[And any foreign Seaman, who has served two Years in Time of War, on board Man of War, Merchant Ship or Privateer, is thereby naturalized.]

[By *Stat. 14 G. 2. c. 36.* Trade to and from *Persia*, through *Russia*, is permitted.]

[By *Stat. 18 G. 2. c. 17.* A Reward of 20,000 *l.* is given for the Discovery of a Passage by Sea from *Hudson's Bay* to the Western and Southern Ocean of *America*.]

[*St. 16 G. 3. c. 6.* grants Reward of 20,000 *l.* for discovering a Passage between the Atlantic and Pacific Oceans North of 52d Latitude, and 5,000 *l.* to such as shall first approach within one Degree of the North Pole.]

[By *Stat. 13 G. 3. c. 26.* No Alien may purchase any Share of a Ship belonging only to natural-born Subjects, without Consent in Writing of the Owners of three-fourths in Value.]

[*English* built Ship importing *French* Wines and Vinegars from *France*, tho' become *French* Property before, and Master and three-fourths of Mariners *French*, is forfeited. *Scott, qui, &c. v. A Chez. T. 16 & 17 G. 2. Parker 21.*]

[Stat. 17 G. 3. c. 48. impowers Commissioners to give Rewards under 5000l. for probable Proposals for discovering Longitude.]

(I. 3.) Owner of Ship.

(I. 3.)
The major
Part of the
Owners over-
rules all.

If there are many Owners; the Ship shall be employed by Consent of the Majority. *Sbo. 13.*

And the others, who do not consent, shall have their Share of the Profit. *Ibid.*

Or, by Order in the Admiralty, the Owners who consent may give Security, that they will satisfy him who does not consent for his Share, if the Ship perish, and will render his Share, if the Ship return; whereupon the Owner who does not consent, shall have no Part of the Freight. *2 Ca. Ch. 36. (Vide Carth. 27.)*

Nor shall be relieved for it in Equity. *R. 2 Ca. Ch. 36.*

If there are many Part-Owners of a Ship, and the major Part agrees to the Voyage, the Assent of all shall be intended, who do not express a Dissent. *R. Skin. 230. Adm. Carth. 27.*

If any dissent, an Action upon the Case lies against him for the Damage in the Loss of the Voyage. *Per Holt, Carth. 27. Comb. 110.*

So it was allowed, that upon Security for the Shares of the lesser Part of the Owners, given by Recognizance in the Admiralty, the Voyage should proceed. *R. Skin. 230.*

But now it is adjudged, that the Voyage cannot proceed, but a Prohibition goes, if there be a Suit in the Admiralty upon such Recognizance. *R. Carth. 27.*

(I. 4.) Master.

Vide Merchant, (E. 5. 6.)

The Master of a Ship has the Custody and Trust of the Ship and the Goods in it. *3 Lev. 38. De Jure M. 209.*

And therefore, he shall answer for all Goods, which are lost by his Default; for he has a Recompence for the Carriage. *De Jure M. 209. Vide Action upon the Case for Negligence, (C. 1.)*

And shall be charged for the Duty, at any Port, for Weighage, &c. of the Goods. *R. 3 Lev. 38. R. 1 Sal. 249.*

If the Master contract and bind the Ship to such a Value, by Assent of the Owner, he shall be bound by the Contract of the Master. *2 Ca. Ch. 238.*

Otherwise, if the Contract be without the Allowance of the Owner. *Ibid.*

Or, if the Master makes a Deviation, or Barretrie, whereby the Goods are lost; tho' the Owner allowed the Master to make the Contract, he shall not answer for the Deviation. *R. 2 Ca. Ch. 239.*

So, if the Master buy Victuals for the Ship, and do not pay for them, the Owners are responsible to the Vendor; for the Master is but their Servant. *2 Ver. 643.*

Tho' the Owners give the Master Money for the victualling. *R. 2 Ver. 643.*

[If Master orders Necessaries (as Sails, &c.) for the Ship, both Owner and Master are liable, unless it appears that Credit was given to the Owners only, and then they only are liable. *Hoskins v. Slayton, T. 10 & 11 G. 2. B. R. H. 376.*]

(I. 5.) Mariners.

Mariners must be obedient to the Master; for if one of them creates an open Debate, he may be put out of the Ship upon Land, and shall lose his Goods in the Ship, and the Half of his Wages. *De Jure M. 220.*

If he use Arms or Weapons, the others may apprehend, imprison and bring him to Justice.

If he conspire to force the Master to another Port out of his Voyage, it will be a Capital Crime.

They

They must be mutually aiding and assisting to one another upon the Sea. *De Jure M. 220.*

They must remain in the Ship till it be discharged, and the Tackle taken down and ballasted anew.

Every one must work with his Companion during the Lading and Discharge of the Ship.

And shall not only deliver Goods out of his Ship, but must carry them for a reasonable Hire to the Place upon Land where they ought to be put, if there are no other Carriers, or Porters for it.

By the Custom of Merchants, Mariners are entitled to Wages at every delivering Port. *2 Ver. 728.*

Tho' an Agreement be made with them, that they shall not demand Wages till a Return to the Port of London. *Ibid.*

When the Freight was also to be paid; and Provision was made before the Voyage begun, that every six Months, Wages should be paid for one Month, during the Voyage. *R. 2 Ver. 728.*

But a Mariner shall lose his Wages from the last Port, if the Ship or Goods are lost. *1 Sid. 179.*

[Wages in general are due upon the Ship's Arrival at the first Port of Destination or Delivery. And in a Voyage from England to Newfoundland, and thence with Fish to Spain, Newfoundland is not a Port of Delivery; and if the Ship is taken between Newfoundland and Spain, the Mariner loses his Wages. *Hernaman v. Bawden, H. 6 G. 3. 3 B. M. 1844.*]

So he shall lose his Wages, if he rebels, and does not repent in due Time, and tender Amends. *De Jure M. 220.*

If he refuses Aid and Assistance to his Companion upon the Sea. *Ibid.*

If he does not help to save the Goods when the Ship perishes.

If he absents himself when the Ship is ready to fail.

N E A D M I T T A S.

Vide Pleader, (3 I. 3.)—Quare Incumbravit, (A.)

N E C E S S I T Y.

Vide Chancery, (4 O. 4.)—Pleader, (3 M. 20, 30.)

N E E X E A T R E G N O.

Vide Chancery, (4 B.)—Prærogative, (D. 3, 4.)

NEGATIVE AND AFFIRMATIVE

Vide Pleader, (R. 3.)

NEGATIVE PREGNANT.

Vide Mandamus, (D. 5.)—Pleader, (R. 5, 6.)

N E G L I G E N C E.

Vide Action upon the Case for Negligence.—Pleader, (2 P. 1, &c.—2 Q.—2 R.)—Retorn, (D. 2.)—Viscount, (D. 1.)

NE INJUSTE VEXES.

Vide Droit, (I.)

NE UNQUES ACCOUPLE.

Vide Pleader, (2 Y. 10.)

NE UNQUES EXECUTOR.

Vide Pleader, (2 D. 7.)

NE UNQUES SEISIE.

Vide Pleader, (2 Y. 7.)

NE W G A T E.

Vide Imprisonment, (E.)

NEW TRIAL.

Vide Pleader, (R. 17.)

NIGHT.

Vide Temps, (E.—F.)

NIL DE BET.

Vide Pleader, (2 V. 6.—2 W. 13, 17, 43, 47.)

NIL DETINET.

Vide Pleader, (2 W. 44.—2 X. 3.)

NIL DICIT.

Vide Pleader, (E. 42.)

NIL HABET IN TENEMENTIS

Vide Pleader, (2 W. 48.)

NOBILITY.

AS to Names of Dignity, and how created, *Vide Dignity*, (A.—B. 1, &c.
—C. 1, &c.)—*Prerogative*, (D. 30.)
How the Trial shall be, Whether One be Noble, *Vide Dignity*, (D.)
How a Dignity will be forfeited, *Vide Dignity*, (E.)
Privileges of the Nobility, as to Trials by Peers, &c. *Vide Dignity*, (F. 1,
&c.)—*Parliament*, (B. 36, &c.)—*Vide Dignity*, (F. 1, &c.)
As to the Right, Stile, Coronation and Dignity of the King. *Vide Roy*.
As to his Prerogatives, *Vide Prerogative*.
As to the Queen, and the King's Children, *Vide Roy*, (F. 1, &c.—G.)
As to the Privy Council, and other Council of the King, and Guardian of the
Kingdom, *Vide Roy*, (E. 2.—H. 1, 2.)

(A) Precedence.

BY the St. 31 H. 8. 10. None but the King's Children shall have Place on
either Side the Throne in Parliament, whether the King be present or ab-
sent.

By the Common Law, the King may give such Precedence to his Counsel-
lors and Subjects as he pleases. 4 *Inst.* 361.

And therefore, by the King's Grant, a Duke may be placed by his Patent
next to such, and before such a Duke. *Ibid.*

Or, that he be *Præcomes*, and shall have Precedence before all *Peers*. R. 4
Inst. 361.

By the St. 31 H. 8. 10. The King's Vicegerent in Ecclesiastical Causes shall
sit on the Right Hand of the Parliament-House on the same Form with, but
above the Archbishop, then the Archbishop of Canterbury, York, London, Dur-
ham, Winchester, then the other Bishops according to Antienty, on the same Side
and Form.

The Archbishop of Canterbury precedes, then the Archbishop of York, then
the Bishop of London, the Bishop of Durham, the Bishop of Winchester, and af-
terwards every Bishop of the one Province or the other, according to his An-
tienty. 4 *Inst.* 361.

The two Archbishops have Precedence of all other Nobility in Parliament,
Council and Commissions, except where the Lord Chancellor presides. *Ibid.*

A Bishop has Precedence of all other Barons, not of Dukes, Marquisses, Earls,
or Viscounts. *Ibid.*

NON AG E.

Vide Infant

NON ASSUMPSIT.

Vide Action upon the Case upon Assumpsit, (H. 5.)—*Pleader*, (2 *Id.* 8.
—2 *G.* 1.)

NON ASSUMPSIT INFRA SEX ANNOS.

Vide Action upon the Case upon Assumpsit, (H. 6, 7.)

NON-CLAIM.

Vide Claim, (B. 1, 2, 3.)—Fine, (K. 1, 2.)

NON COMPOSMENTIS.

Vide Capacity, (D. 5.)—Chancery, (3 Q.)—Devise, (H. 1.)—Discent, (D. 9.)—Idiot, (D. 1, &c.)—Testmoigne, (A. 1.)

NON-CONFORMIST.

Vide Justices of Peace, (B. 20.)

NON DEMISIT.

Vide Pleader, (2 W. 48.)

NON EST FACTUM.

Vide Pleader, (2 D. 8.—2 V. 7.—2 W. 18.)

NON INFREGIT CONVENTIONEM.

Vide Pleader, (2 V. 5.)

NON OBSTANTE.

Vide Pardon, (G. H.)

NON OMITTAS.

Vide Return, (B. 2, 3.)

NON-RESIDENCE.

Vide Esglise, (N. 4.)—Pleader, (2 S. 23.)

NON SUIT.

Vide Appeal, (G. 14.)—Evidence, (A. 5.)—Pleader, (X. 1, &c.)

NON SUM INFORMATUS.

Vide Pleader, (E. 42.—Y. 1.)

NON-SUMMONS.

Vide Abatement, (H. 53.—I. 26.)

NON-

N O N T E N U R E.

Vide Abatement, (F. 14.)

N O N - U S E R.

Vide Liberties, (C. 12.)

N O R R O Y.

(A) The Antiquity and Diversity of Heralds.

TH E R E are three Kings of Arms, who have several Heralds under them :
Garter, Clarencieux, and Norroy. *Vide Courts, (E. 3.)*

Herald, est Vox incertæ Radicis, sed verisimilior Derivatio est a Saxon', Here, Exercitus, et, ald, Famulus sive Minister, quasi Minister Exercitus vel Armorum. Spel. Gloss. Herald.

Temp. H. 3. fuerunt in Anglia Reges Heraldorum, Herald, et Persuivandi. Spel. ibm.

Reges toti Angliæ duo tantum ab antiquo, unus Australium Partium cis Trentam, alter Borealiū trans Trentam. Spel. Herald. hic Norroy, ille Clarencieux nominatus. Spel. ibm.

Garter nullā donatus Provinciā in primum Locum ab H. 5.º fuit superinductus. Spel. v. Herald.

R. 3. 1.º Regni primus Heraldos incorporavit. Spel. v. Herald. 4 Inst. 126.

Ph. & M. Anno regni 3.º granted to them a new Charter, whereby Garter Rex Armorum, Clarencieux Rex Armorum Partium Australium, Norroy Rex Armorum Partium Borealiū, 6 Herald, inferiores Windsor, York, Chester, Richmond, Somerset, Lancaster, et omnes Prosecutores sive Persuivandi Armorum sunt incorporati. Spel. Herald.

(B) The Office.

MUNUS Heraldorum Domi est, quicquid ad Nobilitatem spectat, et Rem Honorariam : foris sunt Legati, Belli, Pacis, Fæderisque Nuncii. *Spel. v. Herald. 4 Inst. 126.*

In Coronationibus, Nuptiis, Exequiis, Principum Congressibus, Pompas ducunt. Spel. Herald.

Curant illustria Spectacula, Hastiludia, Duella, curant Nobilium Insignia et Genealogias. Spel. v. Herald.

(C) The Antiquity of Arms.

TH E Antiquity of Arms and Armories is very antient, which by the Advice of Aristotle seem to have been given to Martial Men for Reward of their Service by Alexander the Great, to Scholars by the Emperor Charles 4th.

The Usage to distinguish Families seems to have been introduced after the Voyage for Recovery of the Holy Land Temp. R. 1. After which, the Descendants of the Chiefs in that Voyage used the same Coat that was there used by their Ancestors, and so those became Hereditary. *1 Sid. 354.*

(D)

(D) The Right to them.

A Man now has an Inheritance and Fee Simple in his Arms, Armories, and Shield. *Co. L. 27. a.*

Which descend, in the Nature of *Gavelkind*, to all the Male Issue, except that the Eldest bears them without Addition, the others shall give an Addition; for *Additio probat Minoritatem. Co. L. 27. a. 140. b.*

And therefore, every Son is as great a Gentleman as the Eldest. *Lit. S. 210.*

So the King may grant Arms to a Man and his Heirs Male, without saying, of his Body, and he shall have a Fee. *Co. L. 27. a.*

But the Issue Female, if there be a Son, shall not take the Arms of the Father by Descent.

Yet a Daughter may bear her Father's Arms, in a Lozenge, or under a Mantle, to shew her Family. *Co. L. 27. a.*

So her Husband may impale, or quarter them, as the Case requires. *Co. L. 27. a.*

So a Man, with the King's Licence, may grant his Arms to another. *4 Inst. 126.*

So he may grant his Surname with his Arms. *4 Inst. 126.*

N O T G U I L T Y

Vide Appeal, (G. 7.)—Pleader, 2 L. 2.—3 M. 11.

N O T A R Y P U B L I C K

Vide Merchant, (F. 8, &c.)

N O T E

The Note and Foot of a Fine.

Vide Fine, (E. 16.)

Promissory Note.

Vide Merchant, (F. 15, &c.)

N O T I C E

(A) Notice.

WHEN Notice is necessary, or not, *Vide By Law, (B. 5.)—Condition, (G. 9.—L. 8, &c.)—Dismes, (I. 2.)—Esglise, (N. 11.)—Pleader, (C. 73, &c.—2 S. 7.)*

What shall be Notice in Equity, and of what Regard it shall be, *Vide Chancery, (4 C. 1, &c.—4 I. 3, &c. 11.)*

How Notice shall be given, and to whom, *Vide Pleader (C. 73, &c.)*

If an Obligation be to pay 300 l. at his Age of twenty-one, or within twenty Days after Marriage upon Notice, which of them first happens, Notice ought to be given of the Age, as well as of the Marriage. *R. Lat. 158.*

NOVEL DISSEISIN.

Vide Affise, (B. 1, &c.)

NULLIUS IN BONIS.

Vide Biens, (F.)

NULLUM TEMPUS OCCURRIT REGI.

Vide Prærogative, (D. 86.)

NULTIEL PERSON.

Vide Abatement, (E. 16.)

NULTIEL RECORD.

Vide Bail, (R. 8.)—Certiorari, (A. 1.)—Pleader, (2 W. 13, 38.)

NULTIEL VILL, &c.

Vide Abatement, (H. 18, &c.)

NUNCUPATIVE WILL.

Vide Devise, (C.)

NUPER OBIIIT.

Vide Affise, (E.)

NURTURE.

Vide Gardian, (D.)

NUSANCE.

Vide Action upon the Case for a Nuisance. Chase, (K.)—Justices of Peace, (B. 24, &c.)—Leet, (L. 12, 13.)—Pleader, (2 N.)—Prescription, (F. 2.)—Prohibition, (A. 3.)

OATH.

Vide Abjuration. —Allegiance, (B. 1, &c.)—Dignity, (F. 3.)—Enquest, (D.)—Justices, (S. 11.) Justices of Peace, (B. 23, 24.)—Leet, (M. 8.)—Officer, (K. 7.)—Pleader, (2 S. 6.)—Serement.

OBLIGATIONS.

Vide Dismes, (B. 1.)—Prohibition, (G. 11.)

O B L I G A T I O N.

(A) Obligation ; What shall be.

AN Obligation is a Deed, whereby a Man binds himself under a Penalty to do a Thing.

If he be bound without a Penalty it shall be called a Single Bill. *Vide* for this *Post*, (C.)

If it be acknowledged before a Mayor of the Staple, Chief Justice, &c. it shall be called a Statute, or Recognizance. *Vide Post*, (K.)—*Statute Staple*.

In every Obligation there must be an Obligor, an Obligee, and a Sum in which he is bound. *Perk. Fait* 119. *Yel.* 194.

An Obligation, as another Deed, must be sealed and delivered. *Vide* for this *Fait*, (A. 1, 2, 3.)

Must be written on Paper, or Parchment, *Vide Fait*, (A. 1.)

But it need not to be read to the Obligor, or subscribed by him. *Vide Fait*, (B. 1, 2.)

There is no Need of Date, or Witness, or Mention of the Sealing, &c. *Dy.* 19. *a.* *R. Dal.* 1. *Vide Fait*, (A. 2.—B. 3, 4.)

What shall be a sufficient Delivery, or not, *Vide Fait*, (A. 3, 4.)

What shall be Part of an Obligation, *Vide Fait*, (E. 2.)

By whom, or to whom an Obligation may be made, *Vide Capacity*.

By what Name an Obligor ought to be described, *Vide Fait*, (B. 1.—E. 3.)

[If the Bond is, *held and firmly bound in 20 l. to be paid to the said A. B. who* is not named before, it is good. *Lambert v. Brantbwaite*, *H. 6 G. 2. Str.* 945.]

[Bond to a Woman for Cohabitation *had* with her is good. *Turner v. Vaughan*, *P. 7 G. 3. 2 Wils.* 339.]

[*A. B. C. D.* and *E.* indicted for Perjury by *F.*, agree that *G.* should give him a Note for 350 *l.* not to appear at the Trials, and that *A. B.* and *H.* should give a Bond to indemnify *G.* against the Note, the Bond is given for an illegal Consideration. *Collins v. Blantern*, *P. 7 G. 3. 2 Wils.* 341, 347.]

[A Bond given for an illegal Consideration is void at Common Law *ab initio*. *Ibid.*]

(B. 1.) By what Words it may be.

AN Obligation does not require any prescribed Form of Words : And therefore, if a Man by his Deed say, *I shall pay you 20 l.* that will be a good Obligation. *2 Rol.* 146. *l.* 37. *Per Brian* 22 *Ed.* 4. 22. *a.*

Or, *Concedo vobis solvere.* *2 Rol.* 146. *l.* 40. *Per Catesby* 22 *Ed.* 4. 22.

Or, *Memorandum that I have received of B. 20 l. which Sum I promise to pay to the same B. &c.* *2 Rol.* 146. *l.* 35. *R.* 22 *Ed.* 4. 22. *a.* *Dy.* 22. *b.* *R. Cro. El.* 729. *Mo.* 667. *Ow.* 127. *Yel.* 23.

So, *I have agreed to pay*, tho' it be in the *Præter-Tense*. *R.* 1 *Leo.* 25.

So, *I am content to pay 10 l. at M. and 10 l. at Lady-Day.* *R.* 3 *Leo.* 119.

I acknowledge to B. by me 20 l. on Demand. *R.* 1 *Vent.* 238. *Dy.* 22. *b.*

So, every Deed, by which a Man acknowledges himself to be indebted to another. *Dy.* 21. *a.*

Or, to have his Money in his Hands. *Ibid.*

So, if a Deed say, *I am bound to A. in 100 l. for which Payment I authorize him to levy the Money on the Farm of B.* It will be a good Obligation, upon which Debt lies, tho' he has Power to levy it otherwise. *R.* 3 *Leo.* 223.

If it says, *I acknowledge to owe to A. for which Payment I bind, &c. to B.* It is a good Obligation to *A.* and the last Words are void. *Cro. El.* 886.

So, I appoint *A.* to take 100*l.* out of the first Money he receives of mine, and makes *A.* his Receiver; for every Deed, which acknowledges a Debt to another, will be an Obligation. *Dub. 3 Mod. 154.*

So, I bind myself to pay all my Brother owes him, with an Averment that he owed him 40*l.* *R. Cro. El. 561.*

Or, I bind myself to save *A.* harmless, &c. in 200*l.* *solvend' cum requisit'.* *Cro. El. 613.*

So, if an Obligation, or Words that make a Bill Obligatory, be wrote in a Book and there sealed, it will be an Obligation. *R. Cro. El. 613.*

(B. 2.) What Words are sufficient.

So, if, by a Bill Obligatory, *A.* acknowledges himself to owe 10*l.* to *B.* to be paid such a Day, and by the same Bill binds himself in 20*l.* and does not say to whom he is bound, it will be good; for it shall be intended to him to whom he was indebted. *R. 2 Rol. 148. l. 10.* (B. 2.)
Tho' they are
uncertain.

So, if it be upon Condition, to stand to the Award of *B.* and *C.* and if they do not agree, to the Umpirage of *D.* without saying, to what, do not agree; for it shall be intended, to make an Award. *R. Cro. Car. 226.*

So, if it be upon Condition to pay fifty Pounds, without saying, of Money, yet it is sufficient; for it shall be intended. *R. 1 Sid. 151.*

So, if an Obligation be, *teneri A. in 20*l.* solvend' dicto Attorn' et Assign' suis*, omitting *A.* to whom he is bound. *R. Sal. 659.*

So an Obligation will be good, tho' barbarous or false Latin be used: As, if a Man be bound in *Septuagent' Libris*, it shall be intended 700*l.* tho' it be barbarous Latin. *R. 2 Rol. 147. l. 2. Mo. 645.* (B. 3.)
Tho' false La-
tin.
Vide Abate-
ment, (H. 2.)

So, if he be bound in *quinquegent'* or *quemquegent' Libris*, for *quingent'*. *R. cont. but afterwards in Error acc'. 2 Rol. 146. l. 50. Hob. 119. 2 Cro. 146.*

In *triginti Libris*, for, *triginta*. *R. 2 Rol. 146. l. 45.*

In *Sexigint' Libris*, for, *Sexagint'*. *R. 2 Rol. 147. l. 10. Hob. 20. 2 Cro. 338.*

Or, *Seffanta*, for, *Sexaginta*. *R. 2 Rol. 147. l. 20. Hob. 19. 2 Cro. 208.*

In *Septuagent' et quinquagint' libris*, for 750*l.* *R. 2 Rol. 147. l. 5. Hob. 116. 10 Co. 133. a. Cro. El. 896.*

In *Sexingent'*, for, *Sexcent' Libris*. *R. 2 Rol. 147. l. 15. 2 Cro. 338.*

In *Trigintata*, for, *Triginta Libris*; for the Syllable *ta* is Surplusage. *R. 2 Rol. 147. l. 20. Hob. 18. R. cont. Yel. 225. R. 2 Cro. 309, 355.*

In *viginti Libris*, for, *viginti*. *10 Co. 133. a.*

So, if a Man be bound by an English Bill in *sewteen*, for *seventeen* Pounds. *10 Co. 133. 2 Rol. 147. l. 42.*

Or, *threty Ponds*, for, *thirty Pounds*. *R. 2 Cro. 607.*

Or, in *sex triginta*, for, *triginta et sex Libris*. *R. Sal. 462. R. Skin. 310.*

In *quinginta et duabus libris*, for, *quinquaginta et duabus*. *R. Jon. 366. Vide infra.*

So, if an Obligation be, *Noverint, &c. me A. tenerie et obligarie B. in 10*l.* ad quam, &c. obligamus me, &c.* it will be good; for the Parties and Sum are well, and any Words, whereby it may be collected that he binds himself, are sufficient. *R. Yel. 193. 2 Cro. 261.*

So, if there be a Blank for the Christian Name of the Obligor, if his Name be subscribed. *R. 2 Cro. 261.*

So, if the Name be *Joaem*, without a Dash, for it shall be intended *Johannem* abbreviated. *R. Cro. Car. 417, 418.*

So, if the Bill be, *cognovit se debere et indebitat' fore Sumam 20*l.* solvere B.* &c. it will be good. *R. 2 Vent. 106.*

So, where the Words are not Latin, if the Sense or Intention may be collected by the Condition, or other Words of the Obligation, it is good: As, if a Man

Man be bound in 20 *Nobilis*, for, 20 *Nobles*; for there is no proper *Latin* Word for *Noble*. 2 *Rol.* 146. l. 42. 2 *Cro.* 203.

If he be bound in *octiginta Libris*, with a Condition for Payment of 40*l.* it will be good; for it shall be intended for 80*l.* R. 2 *Rol.* 147. l. 30. 10 *Co.* 133; *Osborn*, was *octaginta*, and good. *Vide Hob.* 19. *Cont.* but the Condition not there mentioned. *Vide Post*, (B. 5.)

Or, *octogesimo*, for, *octoginta Libris*. R. 2 *Rol.* 147. l. 27. *Hob.* 75. *Mo.* 864.

So, if he be bound in *Septuaginta Libris*, with a Condition for Payment of 350*l.* for it shall be intended 700*l.* R. 2 *Rol.* 147. l. 37. 10 *Co.* 133.

In *quingint' duabus Libris*, with a Condition for Payment of 26*l.* for it shall be intended an Abbreviation of *quinguaginta*. R. 2 *Rol.* 147. l. 45. *Cro. Car.* 416, 418.

In *quinquegeffimis Libris*, for, *quinguaginta*. R. 2 *Cro.* 290.

In *Quadrans Libris*, with a Condition to pay 20*l.* shall be intended, *quadrant'*. R. *Sal.* 462.

So, if it be *quadrant*, in a Bail-Bond for Appearance; for the Statute directs 40*l.* *Semb.* 2 *Mod. Ca.* 342.

(B. 4.)
Tho' there be
a small Va-
riance.

So a small Variance between the Obligation upon *Oyer* and the Declaration, does not avoid it: As, if the Declaration be upon a Bill, *that he will pay, &c.* And the Bill says, *if he pay, &c.* R. 3 *Lev.* 66.

If the Obligation in the Declaration be, 30 *D. Anno D.* 1701. and the Obligation itself upon *Oyer* be 30 *D.* 1701. R. *Sal.* 658.

Or, in such a Year of the King, and the Obligation omits, *Anno Regni.* *Sal.* 658.

(B. 5.)
But not insen-
sible Words.

But where Words are insensible, and the Intent of the Parties cannot be known, the Obligation will be void:

As, if a Man be bound in 20 *Liveris*, it is void; for it does not appear whether it was intended *Libris*. R. 2 *Rol.* 146. l. 47.

Or, 20 *Litris*, or *Lib'is*. R. *Noy* 109.

Or, in *sexgint' Libris*; for there is no such Word, and it does not appear what was intended. R. 2 *Rol.* 147. l. 12. 2 *Cro.* 190.

Or, *octiginta Libris*. 2 *Rol.* 147. l. 30. *Hob.* 19. *Vide Ante*, (B. 3.)

So, if a Man be bound to the Sheriff in *quadragent' Libris*, with a Condition for Appearance; for *gent'* imports *centum*, and therefore it cannot be taken for 40*l.* and the Condition being collateral, does not shew the Intent. R. 2 *Rol.* 147. l. 55.

If he be bound in *Libris* without saying, *how many*. R. *Yel.* 225.

Or, in *viginti Literis*. 2 *Cro.* 203, 603.

So, if it be *terengentate Liberis*. R. 2 *Cro.* 603.

In *quantoginta Libris*. R. 2 *Lev.* 166.

So, if an Obligation be to two in 200*l.* *solvend' 100l. to one, and the other 100l. to the other*, it will be repugnant and void. 2 *Dy.* 350. a. *Acc. per Hob.* 172. *Dy.* 350. a. in *Marg.* For the last Words shall be rejected, and the Obligation stand joint for 200*l.*

(C) Single Bill.

A Single Bill is, when a Man is bound to another by Bill, or Note, without a Penalty.

Upon such a Single Bill, of a distant Time, Interest may be recovered in Damages. *Per Holt*, *Mod. Ca.* 167.

Tho' payable upon Demand, and no Demand proved, where the Defendant pleads, *Non est Factum.* *Ibid.*

Vide Post, (E.)

(D) Bill Obligatory.

A Bill Obligatory is, when he is bound in a Penalty, without a Condition: *Vide Mer- chart, (F. 2.)*
 As, if A. acknowledge himself indebted 20*l.* and for Payment binds him- self in 40*l.* *Cro. Car. 315. 2 Vent. 106.*

So, if he acknowledge himself *debere* 20 *Quarteria Frumenti, &c.* and if he do not pay it at the Day, that he shall lose 40. *Dy. 24. b.*

In an Action upon such a Bill, the Plaintiff cannot declare for the Penalty, without an Averment, that the single Sum was not paid at the Day limited for it by the Bill. *R. Cro. Car. 515.*

So, if the Bill be for 14*l.* *solvend' una cum* 6*l.* upon Account, he must declare only for the 14*l.* For that which comes after the *Solvend'* is no Part of the Bill. *R. Cro. El. 537.*

(E) Condition.

A Condition is in the Nature of a Defeazance, subscribed or indorsed, upon the Obligation. *Vide Defeazance.—Fait, (E. 2.)* *Vide Title Condition, (A. 5.—D. 1, 7, 8.)*

The Words of a Condition ought to have a reasonable Construction: And therefore, if it recites, *that 500*l.* was a Portion for A. and if the Defendant pay Interest yearly, viz. at Christmas and Midsummer next, and the Principal when a Settlement is made;* he ought to pay Interest for the whole Time, after Midsummer next, till the Principal is paid. *R. Ray. 420.*

If the Condition be, *to pay 2*s.* per Week till 7*l.* paid, and if he fail to pay the 2*s.* the Obligation shall be void;* it shall be construed, that if he pay 7*l.* the Obligation shall be void, and if he fail to pay the 2*s.* it shall be in Force. *R. 1 Lev. 77. R. 2 Mod. 285.*

If the Condition be, *to give an Account 2*d* Nov. or to render him to Prison upon an Action then commenced;* it shall be intended of an Action commenced 2*d* Nov. and not of any Action that shall be commenced at any Time after during his Life. *R. 3 Lev. 137.*

But if the Words of a Condition are insensible, the Obligation will be Single: As, if it be, *to pay 2*s.* per Week, and if Default be in Payment, that the Obligation shall be void.* *R. 1 Sid. 105. Ray. 68. 1 Lev. 77.*

If the Condition be, *Whereas A. stands indebted in 50*l.* if the said A. do not pay the 50*l.* the Obligation shall be void.* *R. Sal. 463.*

Whereas the above bounden A. shall and will pay, without saying, if he shall, &c. *R. 2 Bul. 133.*

If the Condition does not mention any Sum. *R. 2 Bul. 156.*

So an Obligation will be Single, if the Condition was impossible, at the Making, or against Law. *Vide Condition, (D. 1, 7, 8.)*

(F) When an Obligation will be Joint.

If many bind themselves by these Words, *Obligamus Nos*, it will be a joint Obligation, and all must be joined in an Action thereon. *Vide Pleadr, (2 V. 2.)*

So, if the Words are, *Obligamus nos et quemlibet nostrum conjunctim.* *R. 3 Leo. 206. Mo. 260.*

If three are bound *to account for all Money received by himself, or by others by his Means or Procurement*, it will be joint. *Hard. 314.*

So, if an Obligation be *to two for 20*l.* solvend' 10*l.* to the one and 10*l.* to the other*, it will be joint, and the last Words shall be rejected. *2 Dy. 350. Acc. ibm. in Marg. et per Hob. 172.*

(G) *When Joint, or Several.*

BUT if many bind themselves by these Words, *Obligamus nos et utrumque nostrum*, the Obligation is joint and several, and all may be sued jointly, or each severally. 2 Rol. 148. l. 35. Dy. 310. b. Cont. Dal. 85.

Or, *Obligamus nos vel utrumque nostrum*, in the Disjunctive. 2 Rol. 148. l. 40.

So, if it be, *Obligamus nos et quemlibet nostrum*. 2 Rol. 148. l. 33. Dy. 310. b. Dal. 85.

So, if two bind themselves, *et alter eorum*. Dy. 310. b.

Or, several, *et quilibet eorum*.

Or, two *et uterque eorum* in 60 l. R. 2 Cro. 45.

So a Bill Obligatory may be several to many; as, if *A.* acknowledge, that he has received 20 l. to the Use of *B.* and *C.* equally to be divided, each has an Action for 10 l. For there may be several Bills to several Persons in the same Deed. Dy. 350. a. in Marg. R. Cro. El. 729.

(H) *When Several only.*

BUT if many execute an Obligation, with a Condition, to pay all Money received by himself, or by others for him, or by his Procurement, each shall be bound for himself only. R. Hard. 314.

(I) *Who are bound by an Obligation.*(I. 1.) *An Executor, or Administrator.*

AN Executor or Administrator is bound by an Obligation, tho' he be not named. 2 Rol. 149. l. 50. Dy. 23. a. Vide Covenant, (C. 1.)

So, the Ordinary, if he administers. 2 Rol. 149. l. 55.

(I. 2.) *A Survivor.*

Where the Act to be done ought to be by all jointly, if one of them dies, the Survivor shall not have Advantage of it: As, if by Indenture Tripartite between *A.* of the first, *B.* of the second, and *C.* of the third Part, it be agreed, that *A.* shall find Diet, &c. for *B.* and *C.* his Wife, and if *A.*, *B.* and *C.* dislike to live together, *A.* shall permit *B.* and *C.* to have such Land: If *B.* die and *C.* will not live with *A.* she shall not have the Land, for the Power to dislike does not survive. R. Lat. 162.

(K) *Recognizance.*

AS to a Recognizance by the St. 23 H. 8. Vide Statute Staple, (B.)

By the Common Law, the Chancellor, the Chief Justices, and Justices Itinerant, have Power to take Recognizances.

So, every Judge of the Realm. Vau. 103.

And this he may do in any Part of England, in Term or out of Term. Bro. Recognizance 20. Hob. 195. Vau. 103.

So the King may give Authority to any by Commission to take a Recognizance of such a one, and return it into Chancery. F. N. B. 267. A. And upon such a Recognizance returned, Execution shall be sued in Chancery, as upon another Recognizance there.

So, if a Suit be depending in a County Court between *A.* and *B.* by Writ or by Plaint, the Sheriff may take a Recognizance of the one or the other. F. N. B. 133. A.

So the Sheriff shall take a Recognizance under 40s. tho' no Suit be there depending. F. N. B. 133.

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A Recognizance in *Chancery* shall be inrolled.
 And if the Time be elapsed, and it be afterwards inrolled by special Order,
 it shall have Relation to the Date. 2 *Ver.* 234.
 Tho' a Judgment, &c. intervene. *Ibid.*
 But a Recognizance is not usually allowed to be inrolled, after the Time elapsed,
 but with Caution, that it shall not prejudice a Purchaser. 2 *Ver.* 751.
 And if it be not inrolled, it shall be taken or paid, only as an Obligation, or
 a Specialty. R. 2 *Ver.* 750.
 If a Recognizance before a Sheriff be not paid, there shall be a Writ to the
 Sheriff, that he, by a *Levari facias*, levy the Money. F. N. B. 133. B.
 If the Sheriff does not do it, there shall be an *Alias*, *Pluries*, and Attach-
 ment against him. *Ibid.*
 So the Sheriff may levy by *Distringas*, upon which also lies an *Alias*, *Pluries*,
 and Attachment. *Ibid.*
 And the Sheriff may sell the Goods levied. *Ibid.*
 But if the Recognizor plead Payment, or deny the Recognizance, the Sheriff
 cannot make Execution. *Ibid.*

Pleadings concerning Obligations.

Vide Pleader, (2 G. 12.—2 W. 9, 16, &c. 46.)

Relief in Equity concerning Obligations.

Vide Chancery, (4 D. 1, &c.)

O B S T R U C T I O N.

Vide Action upon the Case for a Disturbance, (A. 2.)—*Chimin*, (C. 5,
 &c.—D. 8.)

O B V E N T I O N S.

Vide Dismes, (B. 1.)—*Prohibition*, (G. 11.)

O C C U P A N T.

Vide Chancery, (I. 1.)—*Estates*, (F. 1, 2.)

O D I O E T A T I A.

Vide Imprisonment, (L. 3.)

O F F I C E.

Vide Action upon the Case for a Deceit, (A. 6.)—*Action upon the*
Case for a Disturbance, (A. 5.)—*Action upon the Case for Negli-*
gence, (A. 2.)—*Condition*, (S. 1, 2.)—*Franchises*, (F. 30, &c.)
 —*Leet*, (L. 11.)—*London*, (K. 1, &c.—L. 4.)—*Officer*, per
Totum.—*Parliament*, (L. 29, &c. 33, 37.)—*Pleader*, (2 P. 1.—
 2 W. 25, 27.)—*Prærogative*, (D. 67, &c. 83, 84, 89.)—*Pri-*
vilège, (B.)—*Prohibition*, (F. 4.—G. 4)

O F F I C E R.

(A. 1.) Officer, how created.

Vide Justices.

THE King is the Fountain of all Power and Authority, and by his Prerogative has the Nomination of all Officers originally. *Vide Prærogative, (D. 37.)*

The King cannot create an Officer without the Words, *Constituimus, sub an one in such an Office, &c.* for the Words, *Concessimus, the Office to him,* without the other, are not sufficient. 2 *Rol.* 152, l. 40. *Hard.* 351, 356.

He cannot grant antient Offices in other Manner or Form than was usual, if the Form be not altered by Parliament: As, creating by Writ, where before it was by Patent. 4 *Inst.* 75.

Or, for Life, where always before it was granted at Will only. 4 *Inst.* 87.

The Grant of an Office, *una cum Feodis pertinen'*, does not grant any Fees, if it be not an Office by Prescription. *Jon.* 281.

He cannot grant an Office to a Bishop for his Life, to his Successors for ever; for he takes the Office in his Natural, and not in his Politick Capacity; and therefore the Grant over to his Successors is void. *R. Mo.* 809.

But in a Grant of the Mastership of an Hospital, &c. Words of Nomination are sufficient; for he shall be in by the Constitution upon the Foundation. *R. Ca. Ch.* 215.

So, in a Grant of a new Office, the Gift of a Fee, casual or annual, is not necessary. *Cont.* 27 *H.* 8. 28. *R. acc. Mo.* 809.—*Acc.* for he shall have a *Quantum Meruit* for his Labour. *Hard.* 351, 356.

So a Grant of a relative Office, as Parker, House-keeper, &c. is sufficient by the Word *Concessimus.* *Hard.* 356.

(A. 2.) Without Brocage or Affection.

By the *St.* 12 *R.* 2. 2. The Chancellor, Treasurer, Privy Seal, Lord Steward, Chamberlain, Clerk of the Rolls, Justices of the one Bench and the other, and Barons of the *Exchequer*, &c. shall be sworn, not to make Justices of Peace, Sheriff, &c. or other Officer or Minister of the King, for any Gift, Favour, or Affection.

And none who pursues by himself, or other, privily or openly, to be put in any Office, shall be put therein, or in any other, but they shall make all such Officers of the best and most sufficient.

This Statute is worthy to be put in Execution. *Co. L.* 234. a.

(B) Grant of an Office.

(B. 1.) To whom it may be made.

THE Grant of an Office generally may be made to any Person whom the King pleases; for the King has an Interest in his Subject, and a Right to his Service. 1 *Sal.* 168.

And therefore, an Information lies against him, who refuses an Office, being duly elected.

And he shall not be excused, for his Neglect to qualify himself according to Law. *R.* 1 *Sal.* 168.

(B. 2.)
To a Woman.

So the Grant of an Office of Government, which may be exercised by a Substitute or Deputy, to a Woman will be good: As, a Woman may be made Regent of the Kingdom. *Cal.* 201.

So an Office of Inheritance may descend to a Woman, and by Consequence may be granted to her: As, the Office of Marshal of England. *Cal.* 201.

So a Woman may be a Gaoler. *2 Inst.* 382.

A Commissioner of the Sewers. *Cal.* 202.

So she may have the Custody of a Castle. *R. 2 Cro.* 18.

So she may be a Forester, who shall make a Deputy to attend the Eyre, and he shall be there sworn. *4 Inst.* 311.

[A Woman may be Sexton of a Parish, and may vote in the Election of one. *Olive v. Ingram, T. 12 G. 2. Str.* 1114.]

So a Ministerial Office may be granted to an Infant, *exercend' per se vel De-* ^(B. 3.)
putat' suum. *R. 2 Rol.* 153. *l.* 10. ^{To an Infant}

As, the Office of Register of a Bishop, granted to *A. exercend' per se vel De-*
putat' suum after the Death of *B.* will be good, whether *A.* be of full Age at
the Death of *B.* or an Infant. *R. 2 Rol.* 153. *l.* 10, 20. *Jon.* 311. *Cro.*
Car. 280, 556.

So, the Steward of a Court Baron. *Cont. Co. L.* 3. *b.* *R. Cro. Car.* 556.
Vide Copyhold, (R. 5.)

So, the Custody of a Gaol. *2 Inst.* 382.

So a Ministerial Office may be granted to two or more: As, the Office to be ^(B. 4.)
Clerk of the Crown in *B. R.* or *Chancery.* *11 Co.* 3. *b.* *2 Rol.* 152. *l.* 50. ^{To several.}
Vide 4 Mod. 17.

Steward of a Court Baron. *2 Jon.* 127. *Vide Copyhold, (R. 5.)*

Custos Brevium. *Sbo.* 289.—*Cont. Dy.* 149. *b.*

So, an Office established by Act of Parliament, tho' it be in Part Judicial: As,
Auditor of the Court of Wards. *R. 11 Co.* 3. *2 Rol.* 152. *l.* ult. *Adm.* 4
Mod. 17.

So, Chancellor of a Bishop, where it is warranted by Usage. *R. 4 Mod.* 18.
Sbo. 289. *Sal.* 465.

So a Corody certain may be granted to two. *Dy.* 149. *b.*

So a Grant to two, to be one of the Auditors, or a Clerk of the Crown, &c.
will be good; for they are but one Officer, tho' two Persons. *R. 11 Co.* 3.

If a Grant be to two, without saying, *and to the Survivor*; if one die, the
Survivor shall not have it. *Sal.* 465. *R. 11 Co.* 3. *b.*

But a Judicial Office, established at Common Law, cannot be granted to two
or more: As, the Office of Chief Justice, or other Judge. *4 Mod.* 17. *2 Rol.*
152. l. 47.

Nor, the Office of Admiral; for it is Judicial. *4 Inst.* 146.

Nor, the Office of Prothonotary. *2 Rol.* 152. *l.* 45. in *C. B.* for it is not
warranted by Usage; but the Office of Prothonotary in *B. R.* may be in two
Persons. *Per Holt Sbo.* 289.

Nor, a Corody uncertain. *Dy.* 149. *b.*

If the King grants an Office to two and the Survivor, and afterwards grants
to *A.* when the Office *vacare contigerit*; the Grant shall not take Effect, tho'
it may be granted in Reversion, till both die, &c. for during the Life of either,
the Office is not intirely vacant. *11 Co.* 4. *b.*

(B. 5.) To whom not.

But an Office, which concerns the Administration or Execution of Justice, ^(B. 5.)
the King's Revenue, the Publick Good, the Interest or Safety of the Subject, if ^{To a Person,}
it be granted by the King, or a Common Person, to him, who has not Know- ^{who is incom-}
ledge to execute it, it will be void. *2 Rol.* 153. *l.* 30. *Co. L.* 3. *b.* *2 And.* 119. ^{petent.}

And the Court may refuse his Admittance, if he does not make a sufficient
Deputy. *Hard.* 130.

So the Grant of an Office to one, who has another Office incompatible, is not ^(B. 6.)
good; for the first Office will thereby be void: As, if a Forester by a Patent ^{Or has an}
for Life, be made Justice in Eyre of the same Forest, *pro hac vice*, the Office ^{Office Incom-}
Vol. IV. ^{patible.} ^{What shall be}
4 D ^{of} ^{such.}

of Forester will be void; for it is incompatible, being subject to Correction by the Justice in Eyre. 4 *Inst.* 310.

So, if the Warden of a Forest be made Justice in Eyre. *Ibid.*

Or the Steward, or Justice of the Forest be made Justice in Eyre. *Ibid.*

If a Justice of C. B. be made a Justice of B. R. Dy. 159. Cro. Car. 127, 8.

If the Remembrancer of the Exchequer be made a Baron of the Exchequer, the first Office becomes void. Dy. 197. b.

So, if a Town Clerk be made Alderman. Dy. 332. b. in Marg. Vide Post, (K. 5.) Vide Franchises, (F. 27.)

Or, Mayor. Semb. 1 Sid. 305.

So, if a Forester, Keeper of a Walk, or other inferior Officer, in a Forest accept of being Verderor. R. Jon. 295.

So a Justice of B. R. or C. B. cannot take another Office, or Fee, except of the King. 4 *Inst.* 100.

So the Chief Justice of C. B. cannot be Prothonotary, or Clerk of the Papers in the same Court. 1 Sid. 305.

A Bishop cannot have a Benefice by Commendam in his own Diocese; for he cannot visit himself. *Ibid.*

But the Chief Justice of C. B. being made Keeper of the Great Seal continues Chief Justice. Cro. Car. 600. 1 Sid. 338.

So a Justice of C. B. may be Chief Baron of the Exchequer. 1 H. 7. 10. b.

So, by Custom, the same Person may be a Judge, and an Officer to execute Process, for he acts in different Respects: As, where Bailiffs, or Mayor and Bailiffs are Judges in the Court of a Borough, they may also be Officers to execute the Process of the same Court. R. Cro. Car. 138. Jon. 193.

The Bailiff of a Manor may be Steward of the same Manor. 2 Cro. 178.

A Mayor, who is Judge of the Court, may also be the Gaoler, who has the Custody of the Prisoners committed by the same Court. R. Cro. El. 76.

(B. 7.) For what Estate it shall be granted.

(B. 7.)
In Fee.

The King may grant an Office, which relates to the Execution of Justice in Fee: As, the Office of Sheriff. 9 Co. 97. b.

Or, the Office of the Custody of a Gaol. *Ibid.*

(B. 8.)
In Tail.

So an Office may be granted to One and his Heirs Males of his Body: As, a Grant of the Office of Chamberlain of the Exchequer. 11 Ed. 4. 1. a.

(B. 9.)
For Life.

So an Office, that concerns the Administration of Justice, may be granted to One for his Life. 9 Co. 97. b.

So it may be assigned to Trustees in Trust for the Assignor for his Life. Dub. 3 Mod. 145.

(B. 10.)
Quamdiu se bene gesserint.

So, by an Address to the King by the Parliament, it was desired, that the Office of Judges should be granted *quamdiu se bene gesserint*. 3 Rusb. 1366.*

(B. 11.)
At Will.

So an Office, that concerns the Administration or Execution of Justice, may be granted at Will. 9 Co. 97. 3 Mod. 149.

If it be granted *durante beneplacito*, it shall not be determined at the Will of the Party, but only at the Will of the King; and therefore, the Party may surrender, and if forfeited, it shall be found by Inquisition, and till a Surrender, or Forfeiture, he continues Officer. R. Sal. 466.

(B. 12.)
For Years.

But an Office, to which a Trust is annexed, or which concerns the Administration of Justice, cannot be granted for Years; for then it would go to the Executor, or Administrator, or Ordinary, and might be seized, upon Outlawry, &c. R. 9 Co. 97.

And therefore, a Grant of the Office of Marshal of B. R. for Years will be void. *R. 9 Co. 97. R. Cro. Car. 587. Jon. 463.*

Or, a Grant of the Office of Chirographer, *Custos Brevium*, or King's Silver. *9 Co. 97. b.*

So, a Grant of the Office of Clerk of the Crown. *Ibid.*

And of Clerk of the Pipe, Remembrancer, &c. in the *Exchequer*. *Ibid.*

Yet an Office which does not concern Justice, may be granted for Years: As, the Office of Garbler of Spices granted by the Mayor and Commonalty of London, pursuant to the *St. 1 (2d) Jac. 19.* R. Hard. 48.*

The Office of Aulnage, Prisage, &c. for no Attendance upon a Court is required. *Hard. 48, 9.* *[Or 6 Ann. 10.]

The Office of Policies of Insurance. *1 Ver. 12. R. Hard. 351, 357.*

The Office of King's Printer. *Hard. 352.*

So, the Office of Post-Master. *Ibid.*

A Ministerial Office may be granted in Reversion. *11 Co. 4. a. 2 Rol. 154. l. 5. (B. 13.)*

As, the Office of Register of a Bishop. *R. 2 Rol. 154. l. 20. R. Jon. 264. When in Re- v. fion.*

Cro. Car. 259, 279. Jon. 311.

Steward of a Court Baron. *2 Lev. 245.*

The Office of Commissary or Official to a Bishop, where the Grant in Reversion is warranted by Usage. *R. Jon. 264. Cro. Car. 259. R. 4 Mod. 17. Vide Estates, (G. 5.)*

So, by Custom and Usage, a Judicial Office may be granted in Reversion. *Hard. 357.*

But a Judicial Office cannot be granted in Reversion. *11 Co. 4. a.*

Nor an Office partly Judicial, and partly Ministerial: As, the Office of Auditor of the Court of Wards. *R. 11 Co. 4. b.* (P. 14.) When not.

Or, the Master, Surveyor or Attorney of the Court of Wards. *11 Co. 4. a.*

Steward of a Court Leet. *R. 2 Lev. 245. Acc. Dy. 80. b.*

So the Reversion of an Office cannot be granted, by the Name of a Reversion: for there is no Reversion in it. *Cro. Car. 279.*

So the Office of Register shall not be granted in Reversion, where the Usage does not warrant it. *Jon. 311. Cro. Car. 259, 279.*

So, if an Office be granted in Reversion, the Grantee, upon the Death or Forfeiture of the former Officer, must discharge his Duty at his Peril, without Notice given to him of the Vacancy. *1 Sid. 81.*

(C) Who may assign his Office.

AN Office in Fee granted by a Subject generally, may be assigned. *Semb. 9 Co. 48. b. Jon. 113. Hard. 425.*

Tho' it be an Office of Trust; for Heir includes Assigns. *Jon. 113.*

So it may be settled and confined to the Heir Male of the Body of the Grantee. *Jon. 114.*

Or granted by him to A. and B. to be regranted to himself and the Heirs Males of his Body. *Ibid.*

Or a Covenant may be, to stand seised of it to the Use of another. *Jon. 118. Comb. 96. 3 Mod. 145.*

So an Office granted to one and his Assigns may be assigned. *Hob. 170. Jon. 113.*

And the Office of a Teller in the *Exchequer* may be granted to a Man and his Assigns. *1 Ver. 12. Hard. 425.*

But an Office of Trust cannot be assigned, without the Assent of him who granted the Office. *Jon. 121. R. 11 Ed. 4. 1.*

Or, if the Patent does not mention Deputy, or Assigns. *Jon. 113. 11 Ed. 4. 1.*

Tho' it be granted in Fee. *Jon. 121. Hard. 426.*

As, if the Marshal of B. R. in Fee assigns his Office without Assent of the Court. *Dub. 3 Mod. 151.*

So

So the Office of Carver, granted to *A.* and his Heirs, cannot be assigned to another; for it is an Office of Trust and Confidence. *Jon.* 121.
Nor the Office of Forester. *4 Inst.* 315.

(D) Deputy.

(D. 1.) Who may make one.

EVERY Officer, who may assign his Office to another, may make a Deputy: for *cui licet quod est majus, quod minus est magis licet.* *9 Co.* 48. *b.*

And therefore, every Officer in Fee may make a Deputy. *Ibid.*

So he, who holds in Fee by a Personal Service, may make a Deputy: for the Estate may descend to a Woman, Infant, &c. who may be incapable to do it in Person. *2 Inst.* 34.

So where Nothing is required in an Officer but Super-intendency, he may make a Deputy. *3 Mod.* 150.

And therefore, a Constable may make a Deputy; for he is not a Judicial Officer. *R.* 1 *Rol.* 591. *A.* *Mo.* 845. *3 Bul.* 78. *1 Rol.* 274. *Per 2 J.* 1 *Lev.* 233.

So a Woman Forester in Fee may make a Deputy in the *Eyre*, who shall be sworn. *4 Inst.* 311.

So every Ministerial Officer may make a Deputy: As, a Chamberlain, or Alderman. *1 Rol.* 274.

An Auditor in the *Exchequer*. *4 Inst.* 106.

An Escheator, Sheriff, &c. *1 Rol.* 274. *4 Inst.* 226.

A Dean. *1 Rol.* 274.

A Parish Clerk. *Dub. F.g.* 273.

So, if an Office of Labour or small Regard be granted to a Peer, he in respect of the Dignity of his Person may make a Deputy: As, if a Peer be made Steward of a Court Baron, Parker, &c. *9 Co.* 49.

[If Parceners cannot agree in nominating a Deputy or Clerk, Chancery will direct them to draw Lots who shall nominate first. *Seymour v. Bennet, M.* 1742. *2 Atkyns* 482.]

Vide Post, (D. 2.)

(D. 2.) Who not.

But a Judicial Officer cannot make a Deputy: As, Lord Chancellor. *4 Inst.* 88.

A Justice of the one Bench or the other.

A Justice in *Eyre*, till authorized by Statute. *1 Rol.* 274.

High Steward of the Realm; for he is a Judge upon the Trial of Peers. *4 Inst.* 59. *in Marg.*

So a Ministerial Officer, where the Office is granted to be executed by him in Person, cannot make a Deputy. *3 Mod.* 150.

Nor, if it imports a Trust or Confidence in the Person: As, to be Squire to the King's Body, if a Deputy is not allowed by his Patent. *11 Ed.* 4. 1.

Yet if a Judicial Office be granted *tenend' per se vel Deputatum*, he may make a Deputy: As, the Recorder of *London*. *1 Lev.* 76.

So the Recorder in several other Cities and Boroughs. *Ibid.*

Steward of the Borough Court in *Southwark*. *Ibid.*

So Steward of the Palace Court. *Cont. per 2 J. but by the other acc.* *Ibid.*

So, where antient Usage allows a Deputy, a Judicial Officer may make one: As, Constable, and Earl Marshal. *4 Inst.* 126, 128.

(D. 3.) Power of a Deputy.

A Deputy has Power to do every Act which his Principal might do. *R.* 1 *Sal.* 95.

And he cannot be restrained to some Particulars of his Office; for that would be repugnant to his being Deputy. 1 *Sal.* 95.

So a Deputy may depute another to do a particular Act in his Office. 1 *Sal.* 96.

But a Deputy cannot make a Deputy; for that imports an Assignment of all his Authority, which is not assignable. 1 *Sal.* 96. 39 *H.* 6. 33, 4.

[If a Deputy covenants to execute the Office for certain Fees, and to account for the Rest, and new Duty and new Fees are afterwards added by Statute, the Deputy shall account for the new Fees. *Per Hardwicke C. J.* and *Eyre C. J.* *Bulstrode v. Gilbourne*, *H.* 9 *G.* 2. *Str.* 1027.]

(D. 4.) How his Act affects his Principal.

An Officer, generally, shall answer for his Deputy. 2 *Inst.* 466.

So, generally, an Act of the Deputy without the Assent of his Superior, will not be a Forfeiture of the Office: As, of an Act of an Under-Sheriff or Under-Bailiff is not a Forfeiture of the Office of Sheriff or Bailiff in Fee. 2 *Inst.* 191.

(D. 5.) How a Deputy ought to act.

A Deputy, regularly, ought to act in his Office in the Name of his Principal. 1 *Sal.* 96.

As, an Under-Sheriff does all Acts in the Name of the Sheriff. *Ibid.*

And all his Acts are in Right of his Principal, and as his Servant. 11 *Ed.* 4. 1. *b.*

But an Act by a Deputy in his own Name will be good, except in special Cases. 1 *Sal.* 96.

(E) Officers of State.

OFFICERS are Publick, or Private.

Publick are, Officers of State, Officers of Justice, or Officers of the King's Household.

As to the Chancellor, Master of the Rolls, and other Officers in *Chancery*, *Vide Chancery*, (B. 1, &c.)

As to the Judges and Officers in *B. R. C. B.* and *Exchequer*. *Vide Courts* (B. 4.—C. 2, &c.—D. 8, &c.)

As to Justices of Assize, *Vide Assize*, (B. 21, &c.)

As to Justices in *Eyre*, *Oyer* and *Terminer*, *Gaol-Delivery*, &c. *Vide Justices*, (E. 1, &c.—F.—G. 1, &c.—H.)

As to Justices of Peace, *Vide Title Justices of Peace*.

As to Sheriff, *Vide Viscount*.

(E. 1.) High Treasurer.

A Prime Officer of State is the *High Treasurer*, *Vide Courts*, (D. 8.)

The Chief Justicier had the Management of the King's Treasure, as it seems *Temp. W.* 1 & 2. *Mad.* 54.

Temp. Steph. & *H.* 2. &c. he was a distinct Officer. *Mad.* 54.

(E. 2.) High Constable.

The Office of *High Constable* was Hereditary at first. *Sp. Gl.* 184. *Mad.* 27.

So, formerly, there was a High Constable by Tenure.

And if a Manor held by such Service descended to Coheirs, the Husband of the Eldest, or if none of the Women was married, a Deputy might officiate, such as should be approved by the King. *Sp. Gl.* 184.

The Office of Constable was eminent in War and Peace. *Sp. Gl.* 185. *Mad.* 27.

So it may be granted for special Cause *hâc Vice*, as it was 7 *Car.*—2 *Rush.* 112.

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4 E

But

But by the *St. 13 R. 2. St. 1. c. 2.* Upon Complaint, that the Court of the Constable and Marshal had inroached to itself Contracts, Covenants, Trespasses, Debts, *Detinues*, and other Actions, &c. it is declared, that the Conusance of Contracts, touching Deeds of Arms, or War out of the Realm or within, which cannot be determined by Common Law, with other Usages to those Matters pertaining which other Constables have used, belong to the Constable. *Vide Courts, (E. 1, &c.)*

(E. 3.) Marshal.

Many of the King's Officers are called *Marshals*. *Mad. 29.*

The Principal is *Mareschallus Regis vel Mareschallus Angliæ*, called *Earl Marshal*. *Mad. 30.*

And this Office was granted for Life, in Tail, or in Fee. *4 Inst. 128.*

Was exercised in War in the Army, in Peace within the King's Court. *Mad. 33.*

In the King's Court, he provides for the Security of the King, for the Distribution of the Apartments, for the Order and Peace of the House, and for the Determination of Controversies there. *Mad. 33. Vide Courts, (E. 1, &c.)*

The Marshal of *B. R.* was his Deputy, and derived from him. *Mad. 33. Sal. 439, 602.*

So his Office cannot be granted, reserving the Place of Chamberlain of the Prison of *B. R.* for it is incident. *R. Sal. 439.*

(E. 4.) High Steward.

(E. 4.)
The Antiqui-
ty, and Au-
thority of his
Office.

The *High Steward* was an Office at the Time of the Conquest, or before, of Great Authority. *4 Inst. 58. Mad. 34.*

The Office was Hereditary from the Time of the Conqueror till *H. of Bolingbrook* Son of *J. of Gaunt D. of Lancaster*; for *Temp. W. 2.* and *H. 1.* it was enjoyed by *Hugh Grantsemenel*, who held the Barony of *Hinkly* by this Office, and by the Marriage of *Petronel* his Daughter and Heir to *Bellamont* Earl of *Leicester*, came to the Earls of *Leicester*, till it was forfeited *Temp. H. 3.* by the Attainder of *Simon Montfort* Earl of *Leicester*, who *A. 50* of his Reign granted it to *Edmund* his second Son, from whom it descended to *H. of Bolingbrook*, who was the last that had Inheritance in the Office. *4 Inst. 58. Mad. 35.*

The Authority of High Steward was to survey and rule *sub Rege totum Regnum et omnes Ministros Legum Tempore Pacis et Guerra, &c.* *4 Inst. 59.*

And therefore, since the Time of *Hen. of B.* it hath been granted only *bac Vice*. *4 Inst. 59.*

(E. 5.)
Upon the
Trial of a
Peer.

Since the Time of *H. 4.* he hath never been appointed but *bac vice* for the Trial of a Peer. *4 Inst. 49. Vide Dignity, (F. 1, 2.)*

And then his Authority is confined to the particular Indictment. *4 Inst. 59.*

If the Chancellor is a Peer, he is usually appointed High Steward.

Or the Lord Treasurer. *Mo. 620.*

Or any other Lord may be appointed.

And he shall be appointed by Patent, *bac Vice, ad audiend. et terminand.* the High Treason, &c. for which such an One is indicted, &c. *Mo. 620.*

And tho' he does not take any Oath, he must proceed according to the Laws and Customs of the Realm. *4 Inst. 59. 60.*

After the Trial the High Steward cannot adjourn, but must dissolve his Commission. *R. Mo. 622.*

Yet it was adjourned *Temp. H. 8.* to the next Day and then dissolved. *Mo. 622. and R. that it might. Kelk. 57. 3 Inst. 31.*

So after Trial the High Steward, if Execution be not done, by his Precept, may direct Execution. *3 Inst. 31.*

And after all the Service is performed, his Commission shall be dissolved by his breaking the White Rod over his Head. *Ibid.*

[The Court of the High-steward, and the Court of the King in Parliament, are different.]

[In the first, by the Commission, (which is but in the Nature of a Commission of Oyer and Terminer) the sole Right of Judicature is vested in the High-steward, and resideth in his Person, and without the Commission no Step can be taken in order to the Trial; and when his Commission is dissolved (which he declares by breaking his Staff) the Court no longer exists: He alone is Judge of Law and Practice; the Peer's Triers, mere Judges of Fact, are summoned by Precept from him to appear before him on the Day appointed by him for the Trial. *E. Ferrers's Case*, 1760. *Foster* 138.]

[For the Court of the King in Parliament, *Vide Parliament*, L. 16.]

So usually upon every Coronation, he has a Commission *hâc Vice* to hear and determine all Claims of Services to be done at the Coronation. 4 *Inst.* 59.

(E. 6.)
Upon Claims
at a Corona-
tion.

(E. 7.) High Chamberlain.

The Office of *High Chamberlain*, or *Magistra Cameraria*, was also Hereditary, and by H. 1. granted to *Alb. de Ver* and his Heirs, as now to the Earl of *Lindsey*. *Mad.* 38.

And therefore, the Office shall descend to his Heir General, and not to the Heir Male. *R. Jon.* 130.

Tho' it was covenanted 4 *Eliz.* That *I. Earl of Oxford* should stand seised of the Office to himself for Life, and afterwards to the Use of his Son and the Heirs Males of his Body. *Jon.* 110.

(E. 8.) Secretary of State.

By the *St.* 31 H. 8. 10. A Secretary of State, being a Baron, shall take Place of all other Barons in Parliament, not having any Superior Office.

And, if no Baron or Peer, he shall sit on the Uppermost Part of the Sacks in the Midst of the House.

If the Secretary be a Bishop, he shall have Precedence of all the Bishops, except the Archbishops. 4 *Inst.* 362.

But the Secretary being a Viscount, Earl, Duke, &c. shall not have Precedence of Others of the same Degree. *Ibid.*

A Secretary of State *Ratione Officii*, has Authority to commit any, accused of Treason or other Crime against the State. *R. 1 Sal.* 347. 5 *Mod.* 84. *Adm.* 2 *Leo.* 175. 1 *Leo.* 71.

[Has not Power to grant general Warrant to apprehend the Authors, Printers and Publishers of a Libel. *Huckle v. Money*, M. 4 G. 3. 2 *Wilf.* 205. *Money v. Leach*, in *Error in B. R. M.* 6 G. 3. 3 *B. M.* 1742.]

[Nor a Warrant to enter the House of a Person by Name, Author of a Libel, to seize his Papers, and detain him and them. *Beardmore v. Carrington*, P. 4 G. 3. 2 *Wilf.* 244.]

[Note, This Warrant, which was not only to apprehend *Beardmore*, the Author of a seditious Libel, but also to seize his Books and Papers, was called illegal in the Gross; but had it been only to apprehend the Person, Q.]

[He has no Power to grant Warrant to search for, and seize a Man's Papers, in the first Instance, on Information of his being the Author of a Libel. *Entick v. Carrington*, M. 6 G. 3. 2 *Wilf.* 275.]

[He is not a Conservator or Justice of the Peace, *quasi* Secretary, within 24 G. 2. c. 44. *Ibid.*]

[He hath Power to commit for Treason, and seditious Libels, but (*per Prat*, C. J.) not for smaller Crimes. *Ibid.*]

(E. 9.)

(E. 9.) President of the Counsel, and Privy Counsellors.

Vide Roy, (E. 2, &c.)

(F) Officers of the Household.

IN the King's House are many Officers: As, Steward, Treasurer, Chamberlain, Master-Comptroller, Cofferer, &c. 4 *Inst.* 131.

(G) Coroner.

THE Coroner is an ancient Officer of the Crown, who shall hold Pleas of Things concerning the Crown. 2 *Inst.* 31. 4 *Inst.* 271.

And shall be, of the County at large, or of a particular Jurisdiction; As of the Verge, where by the Common Law the Coroner of the County does not intermeddle. 4 *Co.* 46. b.

(G. 1.) Coroner in the King's House.

By the *St.* 33 *H.* 8. 12. The Coroner of the King's Household shall hereafter be named by the Lord Great Master, or Lord Steward of the Household.

And all Inquisitions upon View of Persons slain, in any Palaces or Houses of the King, shall ever be taken by the Coroner of the Household, without the Assistance of the Coroner of any Shire, by twelve or more of the Yeomen Officers of the King's Household, returned by the two Clerks Comptrollers, the Clerks of the Check, and Clerks Marshal, or one of them, on the Coroner's Precept to them.

And such Inquisition by the Coroner of the County is void, and shall be discharged. *R.* 4 *Co.* 46. b.

But if the same Person be Coroner of the Verge, and also of the County at large, an Inquisition before him will be good. *R.* 4 *Co.* 46. a.

So the Coroner of the Verge shall not take an Inquisition, where the Fact does not appear to be done within the Verge. *R.* 4 *Co.* 47. a.

Tho' the Coroner of the County join, and it be taken in the Name of both *Ibid.*

(G. 2.) Coroner in a County.

Temp. R. Alfred, Coroners were ordained in every County. 2 *Inst.* 31.

And in some Counties there are six, in some four, or two, in some but One; for no precise Number is required. 2 *Inst.* 175. *F. N. B.* 163. L.

(G. 3.)

How chosen

The Coroner shall be always chosen in full County by the Freeholders, upon a Writ de Coronatore eligendo. 2 *Inst.* 174. By the *Stat.* 28 *Ed.* 3. 6.

And none can prescribe to make a Coroner. *Co. L.* 114. a.

And therefore, upon the Death or Amoval of a Coroner, a Writ goes to the Sheriff to choose another Coroner. *Reg.* 177. a. *F. N. B.* 163. M.

Or, if more are dead, &c. to choose two or more. *F. N. B.* 164. A.

The Election shall be upon View, or by a Poll, as of Knights of Parliament or Verderors.

When chosen, the Sheriff shall give him the Oath to do his Office. *F. N. B.* 163. M.

And shall certify his Election into Chancery. *F. N. B.* 163. K.

And being chosen, his Office does not determine upon the Demise of the King. 2 *Inst.* 175. *D.* 1 *Lev.* 120.

By

By the *St. W. 1. 3 Ed. 1. 10. Per tous les Counties soient eslieus suffisant homes* (G. 4.)
Coroners, des plus loyals et plus sages Chevalliers, queux melius sachent, puissent, et Who may be
voient a cel Office entendre, &c. chosen.

By the *St. 14 Ed. 3. 8.* None shall be chosen Coroner, if he have not Land in Fee, in the same County, sufficient to answer all People.

By the *St. 28 Ed. 3. 6.* The Coroner shall be chosen of the most convenient and lawful People in the same County.

So a Coroner ought to be of sufficient Ability and Knowledge to do his Office. 2 *Inst.* 176.

And therefore, he shall be discharged, if he have not Land, *cent' Solid' Terra* in the same County. 2 *Inst.* 176. *Reg.* 177. b. *F. N. B.* 163, 164. N.

And where he cannot answer the Dues in respect of his Office, the County, as his Superior, shall answer for him. 2 *Inst.* 175. 4 *Inst.* 114.

So he shall be discharged, if he be *minus idoneus*. *Reg.* 177. *F. N. B.* 163. N.

If he be *Communis Mercator*. 2 *Inst.* 32.

If, *Negotiis occupatus, quod Officio Coronatoris vacare non possit*. *Reg.* 177. a. *F. N. B.* 163. N.

Or, *moratur in extremis Partibus Comitatus, per quod Officium commode exercere nequit*. *Reg.* 177. b. *F. N. B.* 164. N.

If, *fit languidus, Senio, or, Paralyfi, &c. confect'*. *Ibid.*

If he be elected Sheriff or Verderor. *Ibid.*

Yet, it is not necessary that he should be a Knight. *F. N. B.* 164. N.

(G. 5.) Jurisdiction of the Coroner.

The Court of the Coroner is a Court of Record. 4 *Inst.* 271.

And he has Jurisdiction with the Sheriff to take an Appeal of Robbery, or other Felony, in the same County, in the County Court; by the *St. 3 H. 7. 1.* (G. 5.)
H. P. C. 171. *Vide Appeal*, (F.—G. 4.) To take an Appeal, &c.

And such Appeal may be by Bill. *H. P. C.* 171. 2 *Inst.* 32.

So, by the *St. de Off. Coron'* he may take an Appeal of Rape. *Semb. H. P. C.* 171.

And upon such Appeal the Coroner alone is Judge, tho' by the *St. W. 1. 10.* The Sheriff has the Counter-Rolls of Appeals and Inquests, with the Coroner. 2 *Inst.* 176.

And therefore, a *Certiarari* to the Sheriff alone, for removing an Appeal, is not well; for it ought to be to the Sheriff and Coroner. 2 *Inst.* 176. *H.* 171.

By the *St. 4 Ed. 1. de Off. Cor.* If the Appeal be fresh, and there appear apparent Signs, as Effusion of Blood, or open Cry, the Appellee shall be attached, and find four or six Pledges, otherwise but two Pledges.

On Appeal of Wounds, the Appellee shall be kept, till known if the Party will live or die; and if he die, shall be kept; if he recover, and be maimed, or have a great Wound, the Appellee shall find four or six Pledges; if but a small Wound, two Pledges.

One appealed as Accessory shall be kept till the Principal is attainted.

But the Coroner shall not proceed beyond an Entry of the Appeal and the Count, and then deliver it to the Justices. 2 *Inst.* 32.

The Coroner may grant Process to Outlawry, but shall not award the Exigent. *H. P. C.* 171.

The Coroner alone may take an Appeal of an Approver of a Felony in any County. *H. P. C.* 172. (G. 6.)
 By an Approver.

And the Confession of the Felony by the Approver before him is not traversable. *H. P. C.* 171.

But the Coroner shall not make Process upon such an Appeal by an Approver, but shall enter it upon the Roll, and send it before the Justices of Gaol Delivery, who shall issue Process to the Sheriff of the foreign County to take the Appellee. *H. P. C.* 172.

(G. 7.)
Abjuration.
Vide Abjura-
tion, (C.)

The Coroner shall take the Abjuration of him that acknowledges a Felony in the same, or another County. By the *St. 22 H. 8. 14.* and *32 H. 8. 12.* *H. P. C. 172.*

And such Abjuration is not traversable. *H. P. C. 171.*

(G. 8.)
Breach of
Prison.

The Coroner may inquire of Breach of Prison. *Semb. H. P. C. 171.*

And shall take the Confession of such Breach of Prison, which is not traversable. *H. P. C. 171.*

(G. 9.)
Treasure-
trove.

By the *St. 4 Ed. 1. de Off. Cor.* The Coroner ought to inquire of Treasure-trove, who the Finders, and who suspected of it, &c. in the same Manner as of Death.

And the Persons suspected may be attached.

(G. 10.)
Wreck.

The Coroner has Jurisdiction upon an Arm of the Sea, where a Man may see from one Shore to the other. *H. P. C. 171. 4 Inst. 140, 271.*

By the *St. W. 1. 3 Ed. 1. 4.* The Coroner shall seize the Wreck, and see it valued, and delivered to the Town.—So, by the *St. 4 Ed. 1. de Off. Coron.*

(G. 11.)
To take an
Indictment.

By the *St. M. Ch. 9 H. 3. 17. Nullus Coronator teneat Placita Coronæ nostræ.* But by the *St. W. 1. 3 Ed. 1. 10. Coroners loyalment attachent et representent les Plees de la Corone.*

By *St. 4 Ed. 1. de Offic. Coron.* The Coroner, when certified, shall go to the Place where any is slain, suddenly dead, or wounded, and command four, five, or six, of the next Towns, to appear before him at a certain Place, and by their Oaths inquire, if they know where the Person was slain, whether in a House, Field, Bed, Tavern, or Company, who guilty, or who present, Men or Women, and of what Age: Whether slain in the Field or Wood where found, or brought thither, and how, on Horse or Cart, if known, or a Stranger, and where he lodged last.—So, if a Man die in Prison, the Coroner shall make Inquiry. *H. P. C. 170. Fl. 1. c. 26. ff. 5.*

If any are found Guilty, they shall be committed, and those present, tho' not Guilty, shall be attached till the Coming of the Justices. And the Coroner shall go to the House of the Guilty, and inquire what Goods, and what Lands he hath, and of what Value, and when valued deliver them to the Township, who shall answer for All.

And after such Inquiry, the Deceased shall be buried.

And Horses, Boats, Carts, &c. which are Deodands, shall be valued and delivered to the Township.

So that the Coroner, notwithstanding *M. Ch. 17.* may take an Indictment upon the Death of a Man. *2 Inst. 32.*

But only upon the Death of a Man, not for other Felony. *4 Inst. 271.*

And this shall be, *Super Visum Corporis*, otherwise it is void. *4 Inst. 271. H. P. C. 170.*

And the Body shall be dug up, if it be interred before the Coming of the Coroner. *H. P. C. 170.*

And the Township shall be amerced for the Interment, or suffering the Body to putrify, before the Coroner be sent for. *Ibid.*

So, if an Indictment *super Visum Corporis* be insufficient, the Coroner may dig up the Body to take another Indictment. *R. 2 R. 3. 2.*

But after being long buried, the Coroner cannot dig it up without Leave of the Court. *R. 1 Sal. 377.*

If the Body cannot be viewed, Justices of Peace shall inquire. *H. P. C. 170. R. 2 Rol. 96. l. 30.*

Or, Justices of Oyer and Terminer. *D. 1 Vent. 182.*

Or, B. R. may appoint Commissioners to inquire. *Ibid.*

Or, the Grand Inquest may inquire. *D. 1 Vent. 352.*

The Coroner shall inquire of the Flight of the Felon. *H. P. C. 170.*

And

And such Presentment is not traversable. *H. P. C. 170. Per Hale, 1 Vent. 239. Per Cur', 1 Vent. 278.*

By the *St. 3 H. 7. 1.* he shall inquire, if the Town permitted the Felon to escape.

By the *St. 1 & 2 Pb. & M. 13.* The Coroner may bail as before, and shall take the Examination of the Felon and Obligation, and shall certify them to the next Gaol-Delivery.

By the *St. 3 H. 7. 1.* The Coroner shall certify an Inquisition at the next Gaol-Delivery on Pain of 5*l.* (G. 12.) Inquisition.

By the *St. 1 & 2 Pb. & M. 13.* On an Inquisition for Murder or Manslaughter, or Accessary before, the Coroner shall put in Writing the Effect of the Evidence given to the Jury, and shall bind over the Evidence to the next Gaol Delivery, on Pain of being fined by the Judge, and then certify such Obligation and Inquisition.

[The Coroner, on returning a *Felo de se non compos*, is not obliged to return the Depositions. *Coroner of Westminster's Case, P. 10 G. 2. Str. 1073.*]

But the Coroner need not take an Inquisition *ex Officio*, if he be not required. *R. 1 Sal. 377.*

If there are several Coroners in a County, any of them may take an Inquisition of the Matters aforesaid. *H. P. C. 172.*

But the first Inquisition shall stand. *Ibid.*

And upon such an Inquisition Process lies to an Outlawry. *R. 2 Leo. 200.*

The Inquisition need not say, that the Jury came out of the four next Towns. *R. 1 Sid. 204.*

And if it finds a Deodand, it is good, tho' *super Sacramenta*, is not repeated. *1 Sid. 204.*

And tho' the Word *prædict'* is wanting. *R. 1 Sid. 204.*

And tho' it does not shew the Place of the Death. *1 Sid. 204.*

Tho' it has Words superabundant. *R. 3 Mod. 100.*

And if it finds the Substance, tho' defective in Form, it may be amended. *R. 1 Sid. 225, 259. 3 Mod. 101.*

As, if it omits, *that he threw himself into the Water*, if it be found, *felonice submersus est.* *R. 1 Sid. 259.*

Or, omit the Word, *Murdravit*, if found a felonious Killing. *Per Twisd. 1 Sid. 259. Per Holt, 1 Sal. 377.*

But it shall not be taken by Intendment: And therefore, if found, *quod A. jugulum suum felonice et ut felo secuit*, without saying, *that it was mortal*, and *that he died thereby*, it is bad. *R. 1 Sal. 377.*

If found, *quod A. felonice put himself in Rivo et seipsum emergit, et sic se Murdravit*; for, *emergit*, imports, that he came out of the River. *R. 2 Lev. 140.*

An Inquisition *super Visum Corporis* is not traversable. *Carth. 72. 2 Lev. 140.*

[Inquisition *super Visum Corporis* of a Man that hanged himself; filing of it staid, on Affidavit that the Man died five Years before, and the Coroner only dug up a Skull, which he assured the Jury he knew to be the Deceased's, and thereupon the Inquisition was taken. *Rex v. Bond, H. 3 G. Str. 22.*]

An Inquisition may be quashed, if there be Proof of a Misdemeanor in the Coroner; as, Refusal of Evidence, &c. *1 Vent. 182. Per Cur', 1 Vent. 352. 3 Mod. 80.*

[If in an Inquisition *super Visum Corporis*, the Year of our Lord in the Caption is in common Figures, it shall be quashed, for it should be in Words at length, or at least in Roman Numerals. *Rex v. Philips, H. 6 G. Str. 261.*]

Or, if it finds a Man *Felo de se*, it may be traversed. *Per Hale, 1 Vent. 239. Per Cur', 1 Vent. 278. R. 2 Jon. 198. 2 Lev. 152.*

And after an Inquisition quashed, the Coroner shall take a new Inquest *super Visum Corporis.* *1 Sal. 190.*

[A new Inquisition *super Visum Corporis* may be taken by Leave of the Court, but not without. *Rex v. Saunders, P. 5 G. Str. 167.*]

[The Court will make a Rule to take up the Body, on first Inquisition being quashed. *Anon. M. 9 G. Str. 533.*]

But a *Melius inquirendum* will not be granted. *Per Hale, 1 Vent. 182. Semb. 2 Jon. 198.* unless it be for a Misdemeanor in the Coroner. *3 Mod. 238. Carth. 72.*

And an Inquisition that acquits a Man shall not be traversed. *Per Hale, 1 Vent. 239.*

Yet, upon Misdemeanor in the Jury, a *Melius inquirendum* shall be granted. *Semb. 3 Mod. 80.*

So, upon a Misdemeanor in the Coroner, and then a *Melius inquirendum* goes to the Sheriff, or Commissioners, or Justices of Assize, who shall take Examination upon Affidavit, not *super Visum Corporis*. *R. 1 Sal. 190. 2 Lev. 141, 152.*

And a *Melius inquirendum*, not being *super Visum Corporis*, may be traversed. *Carth. 72. 2 Lev. 141.*

[The Coroner may take an Inquisition on board a Man of War, lying *infra Corpus Comitatus*, as in *Portsmouth Harbour*; and if he is opposed by the Captain, an Information shall be granted. *Rex v. Solgard, T. 11 G. 2. Str. 1097. Andr. 231.*]

[If the Coroner omits to take an Inquisition upon an untimely Death, it may be done by Justices of Gaol-delivery, Oyer and Terminer, or of the Peace: but it must be openly, (2, if Notice is not necessary, for it is an Office of intitling;) and if secretly, it shall be quashed. *Rex v. Killinghall, M. 30 G. 2. 1 B. M. 17.*]

[By *Stat. 25 G. 2. c. 29.* For every Inquisition on a Body (not in Prison) in any Place subject to County-rates, Coroner shall be paid 20 s. and 9 d. per Mile for his Journey.]

[For Inquisition on Body dying in Prison, what Quarter-Sessions shall allow, not exceeding 20 s.]

[For a Body slain he shall have also 13 s. 4 d. by 3 H. 7.]

[If he takes more, he is guilty of Extortion.]

(G. 13.)
Process to
Coroners.

Process shall be directed to the Coroners, where the Sheriff is a Party, Plaintiff or Defendant.

Or, if the Sheriff be Cousin to the Plaintiff, or Defendant.

Or, if the Array be quashed for Partiality of the Sheriff.

But if the Sheriff be dead or amoved, Process does not go to the Coroners.

So, if any Process goes to the Coroners, all subsequent Process issues to them, tho' the Sheriff be removed. *R. Mo. 356, 422.*

And if the subsequent Process be to the new Sheriff, it is Error. *R. Mo. 356.*

And shall not be helped after Verdict by the *St. 32 H. 8. 30.* which remedies the Misawarding of Process. *R. Mo. 356.*

Yet, Process to the Coroner, where it ought not to be, is aided by the *St. 32 H. 8. R. Dy. 367. a.*

(G. 14.) Coroner, how punished.

(G. 14.)
For Misdemeanor in
Office.

By the *St. 14 Ed. 1. Exon. de Inq. super Coron.* The Inquirers shall command the Sheriff to summon the Coroner or his Heirs, and all his Bailiffs and Beadles, and shall swear the Bailiffs to return eight Men out of every Town, six out of each Village, and four out of each Hamlet, out of which Number the Inquirers shall swear twelve, to make true Presentment on such Articles as they shall give them, viz.

Si Coronator personaliter accesserit pro Officio faciendo de omnibus Murdris, Feloniis, aut Alium substituerit, et quoties, et quem. Fl. l. 1. c. 18.

Si gratis accesserit quoties requisitus, vel aliquid petiit, aut receperit. Ibid.

Si Catalla Felon' legaliter fuerint appreciata, et Villatae liberata. Ibid.

Si Munera accepit pro falsa Inquisitione faciendâ, Catallis appreciand' ad minorem Valorem. Ibid.

Si Catalla falso irrotulavit, aut aliquid detinuerit. Ibid.

Si Appella falso fecerit irrotulari, vel de rotulis extrahi. Ibid.

Si

Si quid acceperit de Villatâ ubi fecerit Inquisitiones, vel de Corporibus Mortuorum. Fl. l. 1. c. 18.

Si aliquem attach' ut ipsum gravaret. Ibid.

De Thesauro invento. Ibid.

Si Officium suum in omnibus, sine Dilatione, et gratis, fecerit, &c. Ibid.

Et si Coronator coram eis convictus sit de prædict' Vicecomiti liberetur donec manucapi' sit ad satisfaciend' Regi, &c. Ibid.

By the St. 3 H. 7. 1. If a Coroner neglect to make Inquisition, or certify it, he forfeits 5*l*.

If he refuse to execute his Office when sent for, he shall be fined and imprisoned. H. P. C. 170.

[On Inquisition on one that hanged himself, Jury satisfied of his Lunacy, Coroner tells them finding him *felo de se* was Matter of course, and thereupon they find accordingly; afterwards hearing what the Consequence would be, they apply to Coroner to take the Verdict Lunacy, he drew up the Inquisition so, and they all set their Hands and Seals. But on *Certiorari*, he returned the first Inquisition, and the Court stayed filing, and committed Coroner. *Rex v. Wakefield, M. 4 G. Str. 69.*]

[If a Coroner misbehaves, or lives out of the County, on Petition from the Freeholders, and Affidavit of Service at his last Place of Abode, the Court of Chancery will issue a Writ *de coronatore exonerando*; but the new one must be elected by the Freeholders. *Freeholders of Warwick, T. 1744. 3 Atkyns 184*]

[By Stat. 25 G. 2. c. 29. Coroner convicted of Extortion, wilful Neglect or Misdemeanor, shall be amoved.]

Vide Ante, (G. 12.)

So, by the St. W. 1. 10. *Nul Coroner riens demando, ne preign' de nulluy pur faire son Office, sur Paine de la greeve Forfeiture al Roy.*

(G. 15.)
For taking
Fees not due.

And this was in Affirmance of the Common Law. 2 *Inst.* 176.

And therefore, where a Coroner takes 2*s.* 6*d.* for himself, and 2*s.* for his Clerk, before he will view the Body, he shall be fined. 3 *Inst.* 149.

So, by the St. 1 H. 8. 7. He shall take nothing when any is dead by Misadventure, on Pain of 40*s.*

And therefore, in such Case, he shall not take the Fee allowed by the St. 3 H. 7. 1. 2 *Inst.* 176. *Vide infra.*

By the St. 1 H. 8. 7. Justices of Assize, or of the Peace, may hear the Offence by Examination, or Presentment.

But a Coroner may take the Customary Payment of 1*d.* from every Town that comes to the *Eyre*; for it is a Payment due in respect of his Office, and not for doing his Office. 2 *Inst.* 176.

So, by the St. 3 H. 7. 1. He shall have 13*s.* 4*d.* on every Inquisition taken on View of a Body slain, out of the Goods of the Murderer, or if he hath none, out of the Amerciament of the Township for the Escape of the Felon. *Vide supra.*

(H) Exaction by an Officer, What shall be.

SO Exaction by any Officer, will be a great Misprision. *Vide Extortion.*

If it be for taking a Fee not due, or before it be due, or more than is due.

If it be by any other Exaction.

And therefore, no Bond or Writing may be exacted from the Subject, to the King or other Person, to do that, which by Law he is bound to do to the King; and such Bond, &c. will be void, and the Defendant shall plead *Dures*. 3 *Inst.* 149.

By the St. 1 Ed. 3. 2 *Seff.* 15. (now expired) it was prohibited, that any of the King's Council, or Ministers, should exact a Bond of any Subject, to come in Arms to the King, when sent for.

And such Bond is to the Dishonour of the King; for every Subject ought to do the King his Sovereign all Service due, without Compulsion. 3 *Inst.* 149.

If a Bishop, or other Ecclesiastical Judge, or Minister, exact a Bond, or Oath not warranted by Law, the Bond is void, and it will be an Offence finable. 3 *Inst.* 149.

If the Clerk of the Escheator seise Lands purchased by *A.* till a Fine paid. 12 *Co.* 127.

If the Bailiff of a Wapentake omit a Proclamation, which ought to be made, whereby the Inhabitants of a Town, not having Notice, are amerced for not appearing at the Wapentake. *Ibid.*

If a Bishop constrain an Archdeacon, &c. to compound with him, not to retain Causes by Prevention. 3 *Inst.* 148.

(1) Bribery, What shall be.

IF an Officer in a Judicial Office takes, of any other than the King, any Fee, Pension, Robe, Livery, Gift, Reward, or Brocage for doing his Office, or *Colore Officii*, except Meat and Drink of small Value, it will be Bribery and a great Misprision. 3 *Inst.* 145.

By the *St.* 20 *Ed.* 3. 1. Justices shall be sworn, while in Office, not to take Fee nor Robe of any but Ourselves, nor to take Gift or Reward by themselves or other, privily nor apertly, of any that hath to do before them, except Meat and Drink of small Value, nor shall be of Council to Great or Small, where we are Party, &c. on Pain to be at our Will, Body, Lands and Goods, &c.

And this extends to Imprisonment and Fine, but not to Life. 3 *Inst.* 146.

By the *St.* 11 *H.* 4. *Nu.* 28. (not in Print) No Chancellor, Treasurer, Keeper of the Privy Seal, King's Counsellor, King's Serjeant, or any other Officer, Judge, or Minister of the King, taking Fees or Wages of the King, for their Offices, shall take any Gift or Brocage of any, upon Pain to answer to the King the Treble, and satisfy the Party, and to be punished at the King's Pleasure, and discharged from his Office for ever, and any one may prosecute for the King and himself, and shall have a third Part of the Sum recovered. *Ibid.*

Extortion may be by a Judicial or Ministerial Officer, but Bribery only by a Judicial Officer, Ecclesiastical or Temporal. 3 *Inst.* 147.

And tho' the Bribe is small, the Misdemeanor is great. *Ibid.*

So Bribery may be taken *Colore Officii*, tho' no Suit be depending: As, if the Chancellor, Treasurer, &c. make a Customer, or other Officer of the King, for Money given; for he ought not to take any Thing. 3 *Inst.* 148.

Or, if he take a Gift, &c. in any Matter referred to him by the King. *Ibid.*

So, if the Ordinary, having Power to grant Administration to the Widow or Son of a Deceased, take Money to prefer the Widow, or *à contra.* *Ibid.*

(K) How an Office shall be lost.

(K. 1.) By Sale within the *St.* 5 & 6 *Ed.* 6. 16.

BY the *St.* 5 & 6 *Ed.* 6. 16. If any Person bargain or sell any Office or Deputation of it, or any Part of it, or take any Reward or Profit, directly or indirectly, or any Bond, &c. for any Office, &c. which concerns the Administration or Execution of Justice, or the Receipt, Comptrolment, or Payment of the King's Treasure, &c. Account, Auditorship, or Surveying any of the King's Honors, Manors, &c. or Customs, or Attendance in the Custom-house, or the Keeping of any Town, Castle, &c. used as a Place of Strength or Defence, or any Clerkship in any Court of Record, &c. he shall forfeit his Right, Interest, &c. in such Office, Deputation, or Gift, or Nomination to it.

And he that gives any Money, Reward, &c. or any Bond, Promise, &c. for such Office, Deputation, &c. shall thereupon immediately be a disabled Person to have or enjoy it; and such Bond, &c. shall be void.

And this Statute extends to all Offices, which concern the Administration or Execution of Justice: As, the Office of Chancellor of a Bishop; for, in Matrimonial and Testamentary Cases, his Office concerns the Administration of Justice,

Office, and Offices in the Spiritual Court are within the Statute, as well as Offices in the Courts of Common Law. *R. 2 Cro. 269. 3 Inst. 148. 12 Co. 78.*

So, the Office of Register or Commissary. *2 Cro. 269. 3 Lev. 289. 2 Vent. 267.*

Or, Surrogate. *2 Ca. Ch. 42.*

So all Offices, which concern the King's Revenue: As, the Office of Cofferer of the King's Household. *Co. L. 234. a. 1 Rol. 236. 3 Inst. 154.*

The Auditor of Wales. *R. Sal. 468.*

Surveyor of the Customs. *2 And. 55.*

To be Clerk of the Fines to a Justice in Wales, who has Power to take Fines. *Per Co. Golsb. 180.*

So, it will be within the Statute, if a Man for Money, &c. surrender such an Office, to the Intent that the King may grant it to another. *Co. L. 234. a. R. 2 And. 57. Dub. 1 Rol. 157, 236.*

So, if an Officer make a Deputation of the Office to A. rendering out of it so much *per Annum* to him. *R. 2 Ca. Ch. 42.*—Rendering a Sum in Gross, generally, without Regard to the Salary or Profits. *R. Sal. 468. Mod. Ca. 234. R. 2 And. 57. Vide infra.*

Tho' the Profits always amount to more than the Sum reserved to be paid by the Deputy. *Mod. Ca. 234.*

So, if the Bailiff of the Savoy demise *Bona felonum*, &c. which belong to the Office, to B. and make his Deputy, rendering so much *per Annum*. *Semb. 2 Lev. 151.*

So an Obligation, for Performance of Covenants in an Indenture, will be void, tho' there are other Covenants besides those, which relate to the Sale of the Office. *R. 2 And. 57, 108.*

If an Office be void by Force of the Statute, the Nomination belongs to the King. *R. 2 Vent. 267. Vide Forfeiture, (C.)*

And the King cannot dispense with a Person disabled by the Statute to enjoy such Office. *3 Inst. 154.*

But the *St. 5 & 6 Ed. 6. 16.* does not extend to an Office of Inheritance, or the Office of Keeping any Park, House, Manor, Garden, Chase or Forest.

Nor, to an Office in the Gift or Grant of the Justices of B. R. or C. B. or Justices of Assize.

So an Office for Life or Years, derived out of an Office of Inheritance, is not within the Statute. *R. 2 Lev. 151.*

Tho' the Fee of the Office be in the King. *Ibid.*

So the Sale of the Office of Bailiff of an Hundred is not within the Statute; for it is not an Office of Trust, nor concerns the Administration of Justice. *4 Leo. 33.*

So it will not be within the Statute, if a Deputy gives a Bond to pay a Moiety of the Profits to his Principal, for it amounts only to an Allowance of the other Moiety to the Deputy for his Trouble. *R. Sal. 466.*

Or a Sum in Gross out of the Profits; for if the Profits do not amount to it, it shall not be paid. *R. Sal. 468. Mod. Ca. 234. Vide supra.*

Or a less Sum certain, where the Salary is certain. *R. Sal. 468. Mod. Ca. 234.*

So, by the *St. 5 & 6 Ed. 6. 16.* All Acts, by an Offender against that Statute before Removal from his Office, shall be good.

(K. 2.) By Forfeiture.

So an Office shall be lost by Forfeiture: As, if he break the Condition annexed to it by Law, by *Non-user*, or *Abuser*. *11 Ed. 4. 1. b. Vide Condition, (S. 1, 2.)*

As, if an Officer of Justice, as a Recorder, &c. refuse Attendance, upon a Summons, at the Court. *R. Sal. 435.*

If the Marshal of B. R. refuse, or neglect, to attend the Court. *R. 39 H. 6. 34. a.*

If

If the Serjeant at Arms neglect his Attendance upon the Lord Chancellor. *Mo. 193.*

If the Clerk of the Signet does not attend in his Waiting-Month. *1 Sid. 81.*

But Non-attendance will not be a Forfeiture, where he had lawful Licence for his Absence: As, if the King gives a Licence to a Serjeant at Arms for not attending the Chancellor, tho' it was only by *Parol. R. Mo. 193.*

So, if an Officer be imprisoned for a Misdemeanor in his Office, Non-attendance during his Imprisonment is no Forfeiture. *Semb. Cro. Car. 491.*

Vide Post, (K. 8, 11, &c.)

(K. 3.) By Misdemeanor in his Office.

So, if he commits a Misdemeanor contrary to the Nature of his Office: As, if a Gaoler of a Prison be guilty of Extortion. *R. 2 Lev. 71. Vide Condition, (S. 1, 2.)*

Or, suffers two voluntary Escapes. *R. 3 Lev. 288. Adm. Dy. 151. b. 9 Co. 96. R. 39 H. 6. 33. b.*

So *crassa Negligentia* amounts to a voluntary Escape; as, if he unlock his Doors and go away. *Cro. Car. 492.*

If a Searcher be absent, and has no Deputy at the Port, where a Ship lades, or unlades. *R. Cro. Car. 492.*

But a negligent Escape is not a Forfeiture of his Office. *39 H. 6. 33. b. 2. Bul. 58.*

Nor a single Escape, tho' it be voluntary. *39 H. 6. 33. b.* The Book says, that an Escape shall not be intended voluntary, if it be not so found by Verdict, or expressly confessed by the Party, and that a single Escape does not forfeit the Office; but it does not say, that a single Escape is not a Forfeiture, if it was voluntary. *39 H. 6. 33. 4.*

So *Non-user*, or *Abuser*, of an Office, by him or his Deputy, forfeits the whole Office. *Pal. 80.*

And the Default of the Deputy shall be charged upon the Principal Officer. *Dy. 238. b. Semb. 3 Mod. 146.*

So, if a Master directs his Servant or Deputy, to do an unlawful Act, and he exceeds his Authority, the Master shall answer for him. *Mo. 777.*

But a tortious Act of a Servant, or Deputy, does not affect his Master, who gives Authority for a lawful Act only. *Semb. Mo. 777. R. Mo. 787.*

(K. 4.) By Non-Attendance upon the King in his Wars.

So, by the *St. 11 H. 7. 18.* If any within the Realm, having Office or Fee by the King's Grant, attend not on him in Person, when the King goes to his Wars in Person, he shall forfeit his Office, &c. unless by the King's special Licence or Sicknes, or other Lett, by which he could not come, duly proved, he be prevented.

And this Act is perpetual, and did not determine by the Death of *H. 7. Dy. 211. a.*

And the Licence, as well as Sicknes, or other Impediment, ought to be duly proved. *Dy. 211. b.*

But, by a Proviso in the same Statute, it does not extend to a Spiritual Person, the Master of the Rolls, or other Officer or Clerk of *Chancery*, Justices of either Bench, Barons of *Exchequer*, or Officers or Clerks of those Places, nor to the King's Attorney, Solicitor or Serjeants, nor to the Clerk of the Council, or any in the King's Service in *Berwick* or *Carlisle*.

So it does not extend to an Officer, who had not his Office by a Grant of the same King, but of his Predecessor. *R. Dy. 211. a.*

(K. 5.)

(K. 5.) By Acceptance of another Office incompatible.

So a Man shall lose his Office, if he accepts another Office incompatible. (K. 5.)
 As, if the one Office be under the Controul of the other: As, if the Remem-^{What shall}
 brancer of the *Exchequer* be made a Baron of the *Exchequer*. Dy. 197. b. *Vide*
Ante, (B. 6.) be such.

If a Town Clerk be made Mayor, or Justice of Peace, or Alderman of the
 same Borough. *Vide Franchises*, (F. 27.)

(K. 6.) By Destruction of the Thing for which the Office was granted.

So an Office may be lost by Destruction of the Thing to which the Office
 belongs: As, if one grants the Office of Parker, and afterwards destroys his
 Park; the Office, with all *casual Fees*, is gone. *R. Cro. Car. 60. Hut. 86.*

If a Grant be to *A.* to be Steward of a Manor, and afterwards the Manor is
 dissolved. *Cro. Car. 60. Hut. 87.*

If a Corporation be dissolved or surrender, the Office of Recorder, Town-
 Clerk, &c. is gone. *Hut. 87.*

But if the King, or another, grant to an Officer a *collateral Fee*, as *20l. per*
Annum for his Life for the Exercise of his Office; that does not determine
 by Destruction of the Thing to which the Office belonged. *Cro. Car. 60.*
Hut. 87.

(K. 7.) By Neglect of Oaths and Sacrament.

So, by the *St. 25 Car. 2. 2.* All admitted into Office, Civil or Military, or *Vide Allegi-*
 who shall receive a Salary, Fee, &c. by Reason of a Patent from the King, or *ance (B. 1,*
 have a Place of Trust under him, or by his Authority, or by Authority derived *&c.)*
 from him, in *England, Wales*, or the Navy, or *Jersey* or *Guernsey*, or admitted
 into Service in his Majesty's or Royal Highness's Family, shall take the Oaths
 of Allegiance and Supremacy the next Term * after Admittance in *Chancery* or * [The Time
B. R. or at the next Quarter Sessions of the Place where he resides, between enlarged to
 Nine and Twelve in the Forenoon. six Calendar
 Months after
 Admission, or
 Return from
 abroad, by
 q Geo. 2. 26.]

And shall receive the Sacrament, &c. in three Months after such Admittance
 in some Publick Church, on the Lord's Day, &c.

And in the Court, where he takes the said Oaths, shall deliver a Certificate of
 receiving the Sacrament under the Hands of the Minister and Churchwarden,
 and make Proof thereof by two Witnesses on Oath: And at the same Time
 shall make and subscribe the Declaration against Transubstantiation.

And a Person, who neglects so to do, shall be *ipso facto*, incapable of the
 Office, &c. and if, after such Neglect, &c. he execute the said Office, being
 convict on Information or Indictment, he shall be disabled to sue in Law or
 Equity, to be Guardian, Executor or Administrator, to take a Legacy or Deed
 of Gift, to bear Office in *England* or *Wales*, and shall forfeit 500*l.* to be re-
 covered by him that shall sue in Action of Debt, Information, &c. in any
 Courts of *Westminster*.

On Tender of any Person to take the Oaths, the Court is enjoined to admi-
 nister them, and the Names of the Persons taking them shall be inrolled in Rolls
 to be kept for that Purpose, &c.

By the *St. 13 & 14 W. 3. 6.* and *1 Ann. 22.* All such Persons, and all Ec-
 clestiaſtical Persons, Members of the University of the Foundation, being of the
 Age of Eighteen, Tutors, Schoolmasters and Ushers, Preachers in separate Con-
 gregations, Serjeants, Barristers, Advocates, &c. shall take the Oath of Abjura-
 tion at the Times and under the Penalties aforesaid. And this was confirmed by
 the *St. 1 Geo. 13. **

And they may take the Oaths, make Certificate of receiving the Sacrament, * [and extend-
 &c. in *C. B.* or *Exchequer*, as well as *Chancery*, *B. R.* or Quarter-Sessions. ed to High
 Constables.]

And by the *St. 1 Ann. 22.* may do it at the next Term or Quarter-Sessions, tho' above three Months after Admission to the Office.

An Information lies for refusing to qualify himself for an Office, tho' he be a Dissenter. *R. per 2 J. Eyre cont. Skin. 514.*

But by the *St. 25 Car. 2. 2.* It is provided, that the Act shall not extend to an High or Petty Constable, Overseer, Churchwarden, Surveyor, or like inferior Civil Officer, nor to the Office of a Forester, Park-keeper, Bailiff of a Manor, or the like private Office.

And therefore, not to a Censor in the College of Physicians. *Dub. Carth. 478.*

[The common Freemen of a Borough are not obliged to take the Test. *Borough of Christchurch, H. 2 G. 2. Str. 828.*]

(K. 8.) Who shall take Advantage of a Forfeiture.

Vide Post, (K. 11, &c.)

If an Office be forfeited, the King, generally, shall have the Advantage of the Forfeiture: And therefore, where a Statute makes an Office void for any Cause, the King shall have the Forfeiture. *3 Lev. 290.*

So, where the *St. 5 & 6 Ed. 6. 16.* says, If any bargain and sell, &c. any Office, &c. he shall forfeit his Right, &c. If any Archdeacon of the Patronage of a Bishop sell, &c. whereby the Office is forfeited, the King shall grant it, and not the Bishop or Archdeacon. *3 Lev. 289.*

But generally, a Forfeiture by an Officer for Life or Years, derived out of an Estate of Inheritance of the same Office, shall be lost only as to himself; and he who has the Inheritance shall take the Advantage. *2 Lev. 71. R. 3 Lev. 288. 39 H. 6. 34. a.*

As, if a Parker in Fee grant the Office to B. in Tail, for Life, &c. who breaks the Condition annexed in Deed or by Law, he who has the Fee shall have the Office. *R. Mo. 707.*

(K. 9.) So an Office may become void by Surrender.

Vide Patent, (G.)

So an Office may become void by Surrender: As, if an Officer surrender his Patent in *Chancery. 11 Ed. 4. 1. b.*

So, if he surrender, in Person in Court, the Office of Comptroller of the Pipe to the Chancellor of the *Exchequer*, present in Court, who grants it to another in Court, all will be good without any Writing, except an Entry in Court. *Hard. 476.*

But if the Patent itself be not surrendered to be cancelled, nor a *Vacatur* entered of the Inrolment, nor an Entry made of the Surrender in the Life of the Master of the Rolls; tho' there be an Entry upon Record, that it was surrendered before the Master of the Rolls, it is not a good Surrender. *R. Dy. 195. a.*

So, if an Officer says before a Master in *Chancery*, that he surrenders his Office, who accepts it, and makes an Entry, *quod tali Die A. venit coram me et sursum reddidit Officium, &c.* into my Hands to the Use of the King; it is not sufficient, without Delivery of the Letters Patent to be cancelled. *Semb. Dy. 176.*

(K. 10.) By the Death of the King.

So, by the Common Law, all Patents of Justices of B. R. C. B. *Exchequer*, Sheriffs, Escheators, Commissioners of Oyer and Terminer, Gaol-Delivery, of the Peace, Attorney-General, determine by the Death of the King.

So, since the *St. 1 Ed. 6. 7. R. Per all the J. 1 Eliz. 1 And. 44. Bend. 79.*

But, by the *St. 7 & 8 W. 3. 27. S. 21.* No Commission, Civil or Military, shall determine by the Death of the King, his Heirs or Successors; but shall continue six Months after such Death, unless sooner superseded, or determined by the next Successor.

So

So, by the *St. 1 Ann. 8.* No Patent, or Grant of any Office or Employment, Civil or Military, &c.

And by the *same Statute*, Justices of Assize, Oyer and Terminer, Gaol-Delivery, *Nisi prius*, and Justices of Peace may proceed, as if the late King were living, but as her Majesty's Justices, and in her Name.

So, by *that Statute*, No Commission of Delegacy, or Review, in Causes Ecclesiastical, Testamentary or Maritime, or any Process thereon, shall be discontinued by the Death of any King or Queen, but may be proceeded on as if such King or Queen were living.

So, by the *St. 4 Ann. 8. S. 8.* The Privy Council of the Queen and her Successors shall not be determined by Death, &c. But shall continue to act * as such * *[Vide 1 Geo. 2. St. 2. c. 23.]* fix Months, unless sooner determined by the next Successor.

So the Lord Chancellor, or Keeper, Lord Treasurer, Lord President, Lord Privy Seal, Lord High Admiral, and Great Officers of the Household, and every other Person in Office, Place, or Employment, Civil, or Military, in *England, Ireland, Wales, Jersey, Guernsey, Alderney, Sark*, or the Plantations, unless sooner removed, &c.

So, by the *St. 6 Ann. 7. S. 8.* This is extended to the Privy Council, Lord Chancellor, and other Officers, after the Union.*

*[*By the St. 1 Geo. 3. 23. the Commissions of Judges are continued, notwithstanding the Demise of the King.]*

(K. 11.) By what Means Advantage shall be taken of a Forfeiture.

If an Office be forfeited, the King may have a *Scire facias* to repeal his Patent. (K. 11.)
R. Dy. 198. *Vide Patent*, (F. 3.) By *Scire facias*.

And, regularly, there must be a *Scire facias* to remove the Party, where he has the Office by Matter of Record; for he cannot be removed without Matter of Record. Dy. 198. a. R. Dy. 211. a. 39 H. 6. 33. *Vide Ante*, (K. 2, 8.)
Vide Patent, (F. 1, &c.)

And the Cause of Forfeiture should be mentioned in the Writ. Dy. 198. b. *Vide Patent*, (F. 7.)

And a *Scire facias* lies before Inquisition, or Office found of the Forfeiture. Dy. 211. a. If the *Scire facias* is brought in *Chancery*, where the Patent of the Office appears upon Record; otherwise the Forfeiture must be found by Office, or otherwise. R. 3 Lev. 223. *Vide Patent*, (F. 7.)

So there must be a *Scire facias*, tho' the Forfeiture incurred by the *St. 11 H. 7. 18.* for he may have an Excuse for his Non-attendance. R. Dy. 211. b.

So there must be a *Scire facias*, if it be an Office for Life. Sal. 466.

If a *Scire facias* be brought to repeal a Patent, the King cannot seise till the Forfeiture be tried. R. 3 Lev. 223.

So an Inquisition may be found, upon a Commission out of *Chancery*, under the Great Seal, and returnable there, of the Grant of the Office and the Causes of Forfeiture. 9 Co. 95. Bro. R. 375. (K. 12.)
By Inquisition, or Office.

And upon such Inquisition returned, the King may seise the Office, without a *Scire facias*. R. 9 Co. 95, 96.

If it be not an Office for Life. Sal. 466. *Vide Post*, (K. 14.)

And the Award of Seifure shall be in *Chancery*, tho' he be an Officer of another Court. 9 Co. 98. a.

By Office and Award of Seifure, the King shall be in Possession of the Office forfeited, without Writ or Commission for that Purpose. *Ibid.*

But to such Office, or Inquisition, the Party shall have his Traverse, or *Monstrans de Droit*, as the Case requires. 9 Co. 98. a. Bro. R. 378. *Vide Prærogative*, (D. 81, &c.)

And if the Cause of Forfeiture be traversed, the Attorney General may join Issue upon it, which shall be tried in B. R. 9 Co. 99. a.

And after a Verdict, Judgment for the King. 9 Co. 100.

Or, for the Officer, *quod restituatur*. 9 Co. 103. b.

So such Office or Inquisition must find every Thing requisite to shew a Title in the King to the Office, otherwise it shall be quashed. 3 Lev. 288. 3 Mod. 335.

As,

As, if the Inquisition finds, that the Warden of the Fleet permitted voluntary Escapes, &c. without saying, what Estate he had in the Office; for, if he had it for Life, the Forfeiture shall not be to the King, but to him who has the Inheritance. R. 3 Lev. 288. 3 Mod. 336. Sal. 469.

So an Inquisition is, to intitle the King, and vest the Office in him, or for Information only. Sal. 469.

If it be to intitle, it must be certain. *Ibid.*

And cannot be supplied by a *Melius inquirendum*: for that goes only, where all that is necessary is not found; not where the Finding is defective. R. Sal. 469.

But in an Inquisition for Information only there needs not so much Certainty: As, if an Inquisition be of the Forfeiture of an Officer in B. R. for such Inquisition is only for Information; for B. R. shall determine of all Forfeitures by their Officers. R. 2 Bul. 58. Sal. 469.

(K. 13.)
By Information.

So, upon an Offence committed by an Officer, which amounts to a Forfeiture, an Information may be exhibited against him. 2 Lev. 71. *Vide Information, (B.)*

Or, upon an Indictment found for such an Offence, the Attorney General may exhibit an Information against him. Dy. 151. b.

But, upon a single Instance of Neglect, the Court does not usually grant an Information. Sal. 467.

To an Information, the Defendant may plead, *Not Guilty*.

If the Defendant be convicted by Confession or Verdict, the Office may be seised into the Hands of the King, without a *Scire facias*, or other Process against him. Dy. 151. b.

(K. 14.)
When, without Office, or *Scire facias*.

So, where no Freehold or Interest is to be divested out of the Party, or vested in the King, the King may take Advantage of the Forfeiture, and make a Grant of the Office, without Inquisition, or *Scire facias*: As, where an Archdeacon sells the Office of Register, contrary to the St. 5 & 6 Ed. 6. whereby his Right is forfeited, and the Grantee disabled to take, the King may grant the Office of Register to another, without Office found, or *Scire facias*; for the Place of Register was void, and the Archdeacon himself disabled to supply it. R. 3 Lev. 290.

(K. 15.)
By Action.

So, if any intrude into the Office of another, and disturb him, who has a Right to it, in the Exercise of the Office, there may be an Affise for the *Disseisin*, if he, who is disturbed have the Freehold. *Vide Affise, (B. 2.)*

If he have not the Freehold, he may have an Action upon the Case. *Vide Action upon the Case for Disturbance, (A. 5.)*

So an Action upon the Case lies for disturbing him, who has a Fee or Freehold; for he may have an Affise, or an Action upon the Case, at his Election. *Vide Action, (M. 1.)*

Vide more concerning Officer in Abatement, (D. 6.)—Action upon the Case for a Deceit, (A. 6.)—Action upon the Case for Misfeasance, (A. 1.)—Action upon the Case for Negligence, (A. 2.)—Chafe, (Q. 1, &c.)—Courts, (E. 3.—P. 16.)—Imprisonment, (H. 8, 9.)—Justices, (M. 12, 13.)—Justices of Peace, (A. 4.—B. 75, 101.)—Leet, (M. 1, &c.)—Pleader, (3 M. 22.)—Privilege, (C. 1.)—Sewers, (F.)—Viscount, (E. 2.)

O L E R O N.

Laws of Oleron.

Vide Admiralty, (E. 12.)

OPPOSER.

O P P O S E R.

Foreign Opposer.*Vide Courts, (D. 15.)*

O R D E R S.

Order of Bastardy.*Vide Bastard, (G. 1, &c.)***Order of Removal of a Poor Person.***Vide Justices of Peace, (B. 73.)***Interlocutory Order.***Vide Chancery, (V.)***Decretal Order.***Vide Chancery, (Y. 1, &c.)—Sewers, (H. 1, 2.)***Holy Orders.***Vide Parson, (B. 1.)*

O R D I N A R Y.

*Vide Administration. — Administrator. — Ecclesiastical Persons. —
Esglise. — Heresy, (B. 2, 3.) — Visitor, (A. 6, &c.)*

O R D I N A T I O N.

Vide Parson, (B. 2.)

O R I G I N A L.

Original Bill.*Vide Chancery, (E. 1, 2.—Y. 6.—2 N. 1.)***Original Writ.***Vide Action upon the Case, (C. 1.)—Action upon the Case upon Assumpsit, (H. 1.)—
Action upon the Case for a Deceit, (F. 1.)—Amendment, (D. 1, &c.)—Assise,
(B. 8.)—Attaint, (C. 1.)—Fine, (E. 1.)—Pleader, (C. 11, &c.—3 I. 2.—
3 M. 1, 6.)—Prærogative, (D. 51.)*

O R P H A N.

Vide Gardian, (G. 1, &c.)—Uses, (N. 5.)

O T H E R R E M E D Y.

Vide Abatement, (H. 50.)—Action, (K. 1, &c.—M. 1, &c.)—Action upon the Case, (B. 8.)—Action upon the Case upon Assumpsit, (C.)—Action upon the Case for a Deceit, (E. 5.)

O V E R S E E R S O F T H E P O O R.

Vide Justices of Peace, (B. 64, &c.)

O U S T E R.

Vide Estates, (H. 9.)

O U S T E R L E S M A I N S.

Vide Prærogative, (D. 90.)

O U T L A W R Y.

Vide Utlagary.

O W E L T Y O F P A R T I T I O N.

Vide Parceners, (C. 8.)

O W N E R S O F S H I P S.

Vide Navigation, (I. 3.)

O O X F O R D.

Vide University, (C.)

O Y I E R.

Vide Abatement, (I. 22.)—Pleader, (P. 1, 2.—2 V. 4.)

O Y E R A N D T E R M I N E R.

Vide Justices, (G. 1, &c.)

P A C K A G E.

Vide London, (K. 1.)

P A I N F O R T E T D U R E.

Vide Justices, (X. 2.)

P A L A T I N E.

Vide Abatement, (D. 2.)—Franchises, (D. 1, &c.)

P A L L.

Vide Popery, (A. 1.)

P A N E L.

Vide Amendment, (F.)—Enquest, (C. 1, &c.)

P A N N A G E, or P A W N A G E:

Vide Chase, (O. 2.)—Grant, (E. 8.)

P A P I S T.

Vide Justices of Peace, (B. 14, &c.)—Popery.

P A R A P H E R N A L I A.

Vide Baron and Feme, (F. 3.)

P A R C E L.

Vide Abatement, (H. 51.)—Grant, (E. 10.)

P A R C E N E R.

(A) Parceners by Common Law.

(A. 1.) Who are.

PARCENERS are by Common Law, or by Custom. *Lit. S. 241.*

Parceners by Common Law are, where Tenant in Fee, or Tail, dies, having several Daughters, and no Son; or several Sisters, and no Issue or Brother; or several Aunts, &c. the Lands descend among all the Daughters, Sisters, Aunts, &c. who make but one Heir. *Lit. S. 241, 242.*

So, if one Parcener dies, the Son or other Heir of the Deceased shall be Parcener with the Survivor. *Vide Co. L. 164.*

If one after Issue dies, by which her Husband is Tenant by the Curtesy; the other shall be Parcener with the Husband, and shall have a Writ of Partition against him, tho' the Husband is not a Parcener. *Lit. S. 264.*

If one Parcener disseises the other, after Recovery they are Parceners again. *Co. L. 167. b.*

So, if one recovers against the other in a *Nuper obiit*, or *Rationabili Parte*. *Ibid.*

If two Parceners alien, reserving a Rent to them in Fee; they are Parceners of the Rent, and not Joint-tenants: For it follows the Nature of the Land. *Co. L. 169. b.*

So,

So, if a Parcener grants a Rent to her Sisters for Equality of Partition. *Co. L. 169. b.*

But Parceners cannot be otherwise than by Descent: For, if several Daughters, Sisters, &c. purchase Lands together, they are Joint-tenants, and not Parceners. *Lit. S. 254.*

(A. 2.) What Inheritances they take, and what, not.

All Lands and Tenements, of which Partition may be made, shall descend in Parcenary.

As, a Rent-charge, tho' it is intire. *Co. L. 164. b.*

A Corody certain. *Ibid.*

A Castle for Habitation. *Co. L. 165. a.*

The Lands or Possessions annexed to a Dignity. *Ibid.*

Tho' they be intire Inheritances, which cannot be divided: As, a Villein; for one may have his Service for a Day, or a Month, &c. and afterwards the other for another Day, Month, &c. *Co. L. 164. b.*

So, an Advowson; for they may present by Turns. *Ibid.*

So a Mill; for one shall have it for so long a Time, or one Toll-dish, the other for a like Time afterwards, or the second Toll-dish. *Co. L. 165. a.*

But where the publick Good requires that one shall have the Whole, the Inheritance does not go in Parcenary: As, the Crown descends only to the eldest Daughter, Sister, &c. for *Regnum non est divisibile.* *Ibid.*

So a Castle for the Defence of the Realm. *Ibid.*

So an Office of Honour, as, to be High Constable of England, &c. shall be executed by the Husband of the eldest Daughter. *Ibid.*

And, before Marriage, it shall be executed by Deputy. *Ibid.*

*[Semb.] So Homage and Fealty shall be done to the Eldest. *Co. L. 67. b. 164. b.**

So a Dignity, or Title of Honour, shall not descend in Parcenary; but the King may confer it on which Daughter he pleases. *Co. L. 165. a. 12 Co. III.*

So, where the Division of an Inheritance would be a Prejudice to another, it goes to the Eldest only, and she shall make Contribution to the others; as, reasonable *Eftovers* appendant to a Tenement; for, if all the Daughters should have them, the Charge would be increased. *Co. L. 164. b.*

So, a Corody uncertain. *Co. L. 164. b. 165. a.*

A Pischary, or Common *sans Nombre.* *Ibid.*

Yet, if the Eldest cannot make Contribution, there shall be an Allotment made to the one for so long Time, and afterwards to the other. *Co. L. 165. a.*

(A. 3.) Incidents to Parcenary.

(A. 3) If there are several Parceners, all make but one Heir to their Ancestor. *Lit. S. 241.*
They make but one Heir.

And therefore, if a Remainder be limited to the Heirs of B. and he dies having two Daughters, they both take.

If one Daughter be attainted for Felony, the Remainder shall be void for the Whole: For whoever takes by Purchase, as right Heir to another, ought to be compleat Heir, and one alone is not so; for they both make but one Heir. *Semb. Co. L. 163. b.*

If B. leases, rendring 2s. Rent, and if he dies, his Heir within Age then 20s. If he dies having two Daughters, the one within Age, the other of full Age, the 20s. Rent is not due; for his Heir was not within Age, both Daughters being but one Heir, and one being of full Age. *Co. L. 164. a.*

If one Parcener enters into the whole Land, generally, and takes the Profits, it shall be the Entry of both, and does not devert the Moiety of her Sister. *Co. L. 243. b. 373. b.*

Or, if both enter, and afterwards one takes all the Profits; this does not devert the Moiety of her Sister, without an actual *Ouster* and *Disseisin.* *Co. L. 373. b.*

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But if one enters after the Death of her Ancestor, claiming the Whole, and takes the Profits of the Whole; this devests the Purparty of her Sister. *Co. L. 243. b. 373. b.*

So, if one enters, and makes a Feoffment; this subsequent Act explains the preceding Entry, and shews that she was seised of the Whole: Yet it is not properly a *Disseisin*, for the other never was seised; nor an Abatement, for both make but one Heir. *Co. L. 374. a. (Vide Co. L. 243. b.)*

So Parceners, till Partition made between them, have but one entire Freehold: And therefore, if Land descends to several Daughters, one *Præcipe* lies against them all. *Co. L. 164. a. Vide Abatement, (F. 4.)*

(A. 4.)
They have an entire Freehold.
When they shall be joined in a Suit.

So in all Actions Real Ancestrel, where the Right descends to them from the same Ancestor, all the Parceners ought to join. *Co. L. 164. a. Vide Abatement, (E. 8.)*

(A. 5.)
When they shall join in an Action.

So, if two Parceners are disseised, they shall join in an Affise. *Co. L. 164. a.*

But where they sue in several Rights, they ought to have several Actions: As, if two Parceners be disseised, and die, their Heirs ought to sue severally; tho' after Recovery they are Parceners again; for each has a several Right. (*Vide Co. L. 164. a.*)

So each Parcener has a Moiety, or several Interest, in the Land descended to her. *Co. L. 163. b.*

And therefore, if one dies, her Purparty does not survive, but descends to her Heir. *Co. L. 164. a.*

(A. 6.)
In what Respect each Parcener has a Moiety.

So one may enfeoff, and make Livery of her Part to the other. *Ibid.*

A Descent to Parceners shall be *in Capita*, not *in Stirpes*: And therefore, if *A.* hath two Daughters, and one dies, and leaves three Daughters, and then *A.* dies; the three Daughters take with the Aunt by Descent, but the Aunt shall have as much as all the Daughters of her Sister. *Co. L. 164. a.*

(A. 7.)
How the Descent shall be to Parceners.

So, if one Daughter of *A.* dies, leaving a Son and several Daughters, the Son shall have all the Purparty of his Mother, as Heir with the Aunt. *Co. L. 164.*

(B) Parceners by Custom.

PARCENERS by Custom are, where all the Sons take the Lands and Tenements equally between them by Descent: As, by the Custom of *Gavelkind* in *Kent*, and elsewhere. *Lit. S. 265. Vide Gavelkind.*

(C) Partition.

(C. 1.) In Law.

PARCENERS are so called because Partition lies between them. *Lit. S. 241.*

Partition may be made by an Act in Law, or in Deed. *Co. L. 165. b.*

As, if one Parcener makes a Feoffment of her Part, this Part is thereby severed, and the Feoffee does not hold in Parcenary, but in Common. *Co. L. 167. b.*

If two Parceners take Husbands, and after Issue die, by which the Husbands are Tenants by the Curtesy; they do not hold in Parcenary; but a Partition is made between them by Act in Law. *Ibid.*

So, if one Parcener disseises the other, till Re-entry or Recovery by the Disseisee, the other does not hold in Parcenary. *Ibid.*

If the Parceners are *Mesne*, and one of them purchases the Tenancy *Peravail*, this makes a Partition of the *Mesnalty*: For her Part shall be thereby extinguished. *Ibid.*

(C. 2.) Partition in Deed.

(C. 2.) Partition in Deed shall be by Consent, or by Compulsion. *Co. L. 165. b.*
 By Consent. Partition by Consent may be made in divers Manners: As, if the Parceners themselves, by Agreement, divide their Tenements into so many Parts, as there are Parceners, each Part by itself in Severalty, and of equal Value. *Lit. S. 243.*

Or, if they choose Friends to make Partition of the Tenements between them. *Lit. S. 244.*

Or, write the several Parts in several Billets, which are rolled within Balls of Wax, and shaken by an indifferent Person, and then each takes a Ball for her Part. *Lit. S. 246.*

Or, if they determine by Lot, who shall take the first Ball.

So they may make Partition by Consent, That one Parcener shall have the Lands for so long a Time, and then the other for so long. *Co. L. 167. a. 180. a.*

That one shall have such a Manor, or Land, for a Year, and the other such an one, and then that they change, and so *alternis vicibus*, to them and their Heirs for ever. *Co. L. 167. b.*

That one shall have such an House, &c. the other such an House and a Rent for Owelty of Partition. *Lit. S. 251. Vide Post, (C. 8.)*

That one shall put her Land in *Hotchpot*, and then shall make Partition of the Whole. *Lit. S. 266, &c. Vide Post, (C. 4.)*

So several Parceners may agree, that one shall have her Part in Severalty, tho' the others hold, without making Partition. *Lit. S. 276.*

(C. 3.) If a Division be made of Tenements into several Parts without a special Agreement who shall choose; the Eldest shall make her Election first, and afterwards according to their Seniority. *Lit. S. 244.*
 When the Eldest shall have the Preference.

So in all Cases, where no Agreement is made, the eldest Parcener shall be preferred: As, if an Advowson descends to several Daughters, the Eldest Daughter shall have the first Turn. *Co. L. 166. b.*

And if the Privilege is given to the Eldest by the Law, without the Act of the Party, it goes to her Issue: As, if an Advowson descend to Parceners, and the Eldest dies; her Heir shall present in the first Turn. *Ibid.*

So, if she marries, or aliens, the Husband or Assignee shall have the same Privilege. *Ibid.*

But if an Agreement be to the contrary, the Eldest shall not have the Preference. *Lit. S. 244.*

Or if, by Assent, the Eldest makes a Division of the Tenements into several Parts. *Lit. S. 245.*

So, where the Privilege is consequent to the Act of the Parties, the Issue or Assignee shall not have it; for it is Personal: As, if Partition is made by Assent, or by the Appointment of Friends, and the Eldest dies; her Heir shall not choose in the first Place, but the next Sister. *Co. L. 166. b.*

So, if Partition be made by the Sheriff; the Eldest shall not have her Choice. *Lit. S. 249.*

(C. 4.) If one Daughter has received Land with her Husband in *Frank-marriage* in the Life of her Father, she shall not have any Part of that which descends upon the Death of her Father, if she does not put the Land given in *Frank-marriage* into *Hotchpot* with that which remains for her other Sisters. *Lit. S. 266, 267.*
 When a Daughter shall put her Part into *Hotchpot*.

And in such Case, the whole Residue of the Lands of the Father descends to the Daughters not married, till the advanced Daughter puts her Lands into *Hotchpot*. *Co. L. 176. b.*

If the advanced Daughter puts her Land in *Frank-marriage* into *Hotchpot*, then Partition shall be made; and the advanced Daughter shall have all the Land given in *Frank-marriage*, and so much more, as will make her Part equal with the Part of any to whom the Residue descended. *Co. L. 177.*

So, if the Donees die before the Father, or before his Land be put into *Hotchpot*; the Issue shall have the same Advantage; and if he puts the Land given in *Frank-marriage* into *Hotchpot*, shall have a Moiety of the Whole. *Lit. S. 270.*

But if Land descends to a Sister not advanced, from any other Ancestor, except the Donor in *Frank-marriage*, the advanced Sister shall be Parcener with her, without putting her Land into *Hotchpot*. *Lit. S. 272.*

So, if Land descends in Tail; for all the Sisters are intitled to Land in Tail, *per formam doni*. *Lit. S. 274. (Vide Co. L. 179. b.)*

So, if any Daughter has Land by Feoffment of her Father, or any other Means, except by a Gift in *Frank-marriage*, she shall be Parcener with her Sisters in all Lands which descend, without putting the Land into *Hotchpot*, which she had from her Father in his Life-time. *Lit. S. 275. (Vide Co. L. 179. b.)*

If a Daughter advanced in the Life of her Father, will put her Land into *Hotchpot*, with her Sister not advanced, she cannot refuse to do it.

And if she refuses it, the advanced Daughter and her Husband may enter into the Lands descended, and hold with her in Parcenary. *Co. L. 176. b.*

Partition by Agreement between Parceners may be by *Parol*, as well as by Deed. *Lit. S. 250.*

Tho' it be made of Things which lie in Grant: As, an Advowson, Rent, Common, &c. *Co. L. 169. a.*

If they are in several Counties, as well as in the same County. *Ibid.*

So a Rent for Owelty of Partition may be granted without Deed. *Co. L. 169. a. Lit. S. 252. Vide Post, (C. 8.)*

So Tenants in Common may make Partition by *Parol*, if they execute it in Severalty by Livery. *Co. L. 169. a.*

But Joint-tenants, by the Common Law, if they had made Partition by Agreement, could not do it by *Parol* without Deed. *Ibid.*

Neither could they after the *St. 31 H. 8. 1.* and *32 H. 8. 32.* For these Statutes only enable them to make Partition by Writ. *Ibid.*

Nor Tenants in Common, if it be not executed by Livery. *Ibid.*

By the Common Law, one or more Parceners might have a Writ of Partition against the others. *Lit. S. 247.*

So, if one after Issue dies, by which her Husband is Tenant by the Curtesy, the other Parcener may have a Writ of Partition against the Husband. *Lit. S. 264. Vide Ante, (A. 1.)*

So, if one aliens her Part in Fee, the other shall have Partition against the Alienee. *Co. L. 175. a.*

So, if one takes Husband, who purchases of a second, the Husband and Wife shall have a Writ of Partition against the third Parcener; because he has one Part in right of his Wife, tho' he has the other Part as a Stranger. *Ibid.*

So, tho' one Parcener has demised for Years, yet Partition lies; for the Freehold continues in Parcenary. *Co. L. 167. a.*

So now, by the *St. 31 H. 8. 1.* Joint-tenants, or Tenants in Common, of an Estate of Inheritance, in their own, or Wives Right, may be compelled to make Partition by Writ *de Partitione faciendâ.*

And by the *St. 32 H. 8. 32.* Joint-tenants, or Tenants in Common, where one, or all, have but an Estate for Life or Years.

By the Equity of these Statutes, the Alienee of a Parcener shall have a Writ of Partition; for he is Tenant in Common with the other. *Co. L. 175. b.*

So may a Husband, who is Tenant by the Curtesy to a Parcener. *Co. L. 175. a.*

(C. 5.)
The Agree-
ment may be
by *Parol*.

(C. 6.)
By Writ of
Partition.
Between
whom it lies.

So, if a Devise be to *A.* of Lands held by Knight's Service, which by the *St. 34 & 35 H. 8. 5.* is void for a third Part, the Devisee shall have Partition against the Heir of the Devisor, who claims such third Part. *R. Bend. 50.*

But by the Common Law, Joint-tenants or Tenants in Common, could not have a Writ of Partition. (*Vide Co. L. 175. a.*)

Nor, the Tenant by Curtesy, or Alienee of a Parcener. *Ibid.*

So Partition does not lie between Parceners, if they have not the Freehold in Parcenary: For if one makes a Lease for Life, a Writ of Partition cannot be sued; for the Writ says, *quod inſimul & pro indiviſo tenent.* *Co. L. 167. a.*

So, if one diſſeiſes the other, Partition does not lie during the *Diſſeiſin.* *Ibid.*

So a Purchaſer from one Parcener ſhall not join with another, in Partition, againſt the third Parcener. *Co. L. 175. b. R. Dy. 128. a. Bend. pl. 76, 210.*

So Partition lies only againſt the Tenant of the Freehold. *Co. L. 167. a. Vide Pleader, (3 F. 1, &c.)*

Except where Partition is brought by Tenant in Common, for a Term of Years. *Co. Ent. 419. a.*

(C. 7.)
How the Par-
tition ſhall be
made.

After Judgment in a Writ of Partition, the Sheriff, by the Oath of a Jury, ſhall make a Division into equal Parts, and render to each Parcener a Part. *Vide Pleader, (3 F. 4.)*

The Sheriff may render firſt to the Eldeſt or Youngeſt, or to which he pleaſes. (*Vide Lit. S. 249.*)

But if there be Land in Fee, and other Land in Tail, he ought to render to each a Part of the Land in Tail. *Co. L. 173. a.*

By Com-
miſſion out of
Chancery.

Vide Chancery, (4 E.)—Vide Poſt, (C. 10.)

(C. 8.)
Rent for
Owelty of
Partition.
How granted.

So, if Tenements, which deſcend to Parceners, are the one of leſs Value than the other, they may make Partition between them, That one ſhall have the one Tenement, and the other the other, and that ſhe who has the Tenement of the greater Value, ſhall grant a Rent out of it to the other and her Heirs for Owelty of Partition. *Lit. S. 251.*

And ſuch Rent is not a Rent-ſervice, but a Rent-charge. *Lit. S. 253.*

And may be granted by *Parol*, without a Deed. *Lit. S. 252. Vide Ante, (C. 5.)*

But if it was granted out of other Land, it ought to be by Deed. *Co. L. 169. b.*

If a Rent be granted for Equality of Partition, without ſaying, out of what Land, it ſhall be iſſuing out of the Purparty of the Parcener who granted it. *Ibid.*

If a Rent be reſerved, it amounts to a Grant. *Co. L. 170. a.*

If Husband and Wife grant a Rent for Equality of Partition out of the Purparty of the Wife, it binds for ever, if the Partition was equal. *Co. L. 169. b.*

If a Rent be granted for Equality of Partition, the Grantee and his Heirs may diſtrain for it of Common Right, into whatſoever Hands the Tenements out of which, &c. ſhall come. *Lit. S. 252.*

(C. 9.) Partition, when indefeasible.

(C. 9.)
If made by
Writ of Par-
tition.

If a Partition be made by Writ *de Partitione faciendâ* after the Appearance of the Tenant, the Judgment is, *Quod firma & ſtabilis imperpetuum teneatur*, and therefore, it ſhall not be defeated. *Co. L. 168. b. 171. a.*

Tho' made againſt a *Feme Covert.* *Co. L. 171. a.*

And tho' it be not equal. *Ibid.*

So it ſhall not be defeated tho' it is not equal, and any one of the Parties is an Infant. *Co. L. 171. a. b.*

So, by the *St. 8 & 9 W. 3. 31.* If made without the Appearance of the Tenant, if ſhe does not appear within fifteen Days after the Return of the Attachment, where an *Affidavit* was made of Notice to the Tenant forty Days before the Return of the Writ, and a Copy of it left with the Occupier of the Land.

But

But by the *same Statute*, If Judgment be in a Writ of Partition, without the Appearance of the Defendant, upon Motion shewing a probable Bar, or that the Demandant hath not Title to so much, within a Year after Judgment, or (if the Party was an Infant, *Covert*, Non sane, or out of the Realm) after the Inability is removed, the Court may order the Defendant to plead, &c.

Or, if the Demandant's Title be admitted, but the Partition appears unequal, the Court may award a new Partition.

So a Partition by Commission out of *Chancery* binds all of full Age, if Part of the Land *in Capite* be allotted to each: For there is a *Proviso* in the Writ to such Intent. *Co. L. 171. a.* (C. 10.)
If made by Commission,

So, if it be equal, tho' some be within Age. *Ibid.*

But an unequal Partition by Commission does not bind any within Age: for it is made, *salvo Jure si*, &c. *Ibid.*

Vide Chancery (4 E.)

So a Partition of Lands in Fee simple by Persons of full Age, sound Memory, and not *Covert*, by Agreement between them, never shall be defeated. *Co. L. 166. a.* (C. 11.)
If made by Consent,

Tho' the Part of one be not equal in Yearly Value to the Part of the other. *Lit. S. 255. Co. L. 166. a.*

So, by Persons within Age, if it be equal. *Co. L. 171. a.*

So, if a *Bastard eigne* and *Mulier puisne* make Partition between them, the *Mulier* shall be bound by it for ever. *Co. L. 170. b.*

So, if Husbands and their Wives *Parceners* make Partition, which was equal at the Time of the Partition, it shall not be afterwards defeated. *Lit. S. 257.*

Neither by the Wives after the *Coverture* determined, or by their Heirs. *Co. L. 171. a.*

Tho' by Surrounding or Neglect, the Parts afterwards become unequal. *Ibid.*

So, if a Partition be made between Husbands and their Wives, not equal at the Time of the Partition, it shall not be defeated during the *Coverture*. *Co. L. 166. a.*

Or, if such Partition be between *Parceners*, where any one is Non-sane, it shall be good during the Life of the Person Non-sane. *Ibid.*

So, if *Parceners* make Partition within Age, and agree to it at full Age, by taking all the Profits of their Parts, &c. it shall be good for ever. *Lit. S. 258.*

So, if *Parceners* make a Partition of Lands in Tail, which is equal, it shall not be defeated by them, or their Issues. *Co. L. 173. b.*

So, if each Part is not equal in Value, it shall not be defeated during the Lives of the Tenants in Tail. *Lit. S. 255.*

So, if Land in Fee is allotted upon a Partition to one *Parcener*, and Land in Tail to another, it shall be good as long as both Estates continue without Alteration: For it is not necessary that the Estates of the Land are equal. *L. S. 260.*

(C. 12.) When it may be defeated.

But if a Partition be of Lands in Tail, and one Part is not equal in Value to the other; after the Death of one, her Issue may disagree to the Partition. *Lit. S. 255. Co. L. 166. a.* (C. 12.)
If it be not equal,

So, if a Partition not equal be of Lands in Fee, or Tail, where any *Parcener* is within Age, if she does not agree to it at her full Age; she may avoid it at any Time during her Nonage, or afterwards. *Lit. S. 258. Co. L. 166. a.*

So, if such Partition is made between Husbands and their Wives; after the *Coverture* determined, the Wife or her Heir may defeat it. *Co. L. 166. a. Lit. S. 256.*

So, if the Purparty of one *Parcener* be evicted by a Title *paramount*, the Partition shall be defeated: For the Partition imports a Warranty and Condition in Law, That the one shall enter upon the other and enjoy her Part in *Parcenary*, if one Purparty be evicted. (C. 13.)

if she be evicted, as long as the Privy between them continues. *Lit. S.* 262. (*Vide Co. L.* 173. b.)

Tho' the Eviction be only of Part of the Purparty. *Co. L.* 173. b.

Or, only of an Estate of Freehold; as, for Life, or in Tail, &c. *Co. L.* 174. a.

So, if all the Land in Fee be allotted to one, and the Land in Tail to another Parcener, and she who has the Land in Fee aliens her Part; her Heir may enter into the Land in Tail to have a Recompence out of it for so much as belongs to her. *Lit. S.* 260.

So, if she who has the Land in Fee makes an Estate Tail only: For the Reversion after the Tail ended, is not of any Account. *Co. L.* 173. a.

So, if she aliens only Part of the Land in Fee, her Heir may waive the Residue, and enter upon the Land in Tail. *Ibid.*

Tho' it was not known that any Part of the Land was entailed: For every one shall be intended to be consant of her Title. *Co. L.* 173. b.

But if the Privy between the Parceners be destroyed before Eviction, then the Parcener who was evicted shall not enter into the Part of the other; as, if after Partition between A. and B. the one aliens in Fee, and then the Alienee is evicted; the Alienor shall not enter upon the other: For by her Alienation she has dismissed herself to have any of the Tenements as Parcener. *Lit. S.* 262.

So she shall not take Advantage of a Warranty in Law. *Co. L.* 174. a.

So, if Land in Tail be allotted to A. and Land in Fee to B. who aliens, and afterwards her Heir enters into the Part of A. she cannot enter into the Land in Fee which was aliened: For by the Alienation the Privy was destroyed. *Co. L.* 172. b.

Yet if she who had the Land in Fee aliens only for Life, or Years; her Heir shall not enter into the Land in Tail. *Co. L.* 173. a.

So, if she who had the Land in Tail, discontinues in Fee, her Issue shall not enter into the Part of the other: For he has Remedy by a *Formedon* for the Land in Tail. *Ibid.*

(C. 14.) How it shall be defeated.

When a Partition by a Commission out of *Chancery* is avoidable, it may be defeated by a *Scire facias*. (*Vide Co. L.* 171. a.)

Or, by a Writ of Partition. *Ibid.*

So, if a Partition be voidable for Want of Equality, she who would defeat it may waive assenting to her Part, and enter into the Part of the other. *Co. L.* 174. a.

And by such Entry she defeats the whole Partition. *Ibid.*

But if a Parcener be evicted after Partition, and would take Advantage of the Warranty in Law annexed to the Partition; she does not defeat the whole Partition, but shall have a Recompence for that which she has lost. *Ibid.*

And she shall have a Recompence for her Moiety only, by which the Loss will be equal. *Ibid.*

(C. 15.) The Effect of a Partition.

Upon Partition made, the Occupation and Descent, which before were in Common, shall be several and distinct. *Sav.* 113.

But a Coparcener, after Partition, continues in the same Privy of Estate as before: For it does not convey, or make any Alteration of the Estate. *Ibid.*

And therefore, Parceners shall have Aid, and vouch, &c. (which are founded in Privy) after Partition, as well as before. *Ibid.*

So Parceners shall be in from the common Ancestor, as before: For the Partition does not make any Degree. *Ibid.*

So a Partition of the Demesnes of a Manor does not sever them from the Manor, as long as the Manor continues in Parcenary. *Ibid.*

P A R C O F R A C T O .

Vide Distress, (D. 2.)

P A R D O N .

(A) By the King ; In what Cases granted.

THE King, by his Prerogative, may grant his Pardon to all Offenders attainted or convicted of a Crime, where he has Hope of their Amendment. *St. P. C. 99. a. 3 Inst. 233. Vide Parliament, (L. 46.) Vide Prærogative, (D. 8.)*

And therefore, in High, or Petit Treason, a Pardon may be granted by the King alone. *3 Inst. 233.*

So, in Murder. *R. 4 Mod. 61. Sho. 284. (Vide Sal. 499.)*

In all Felonies. *3 Inst. 233.*

So, if a Man be convicted for Manslaughter, the King may pardon the Burning in the Hand. *3 Inst. 237.*

So, tho' he be convicted in an Appeal. *H. P. C. 252. (Vide 3 Inst. 237.)*

So, if convicted for Heresy, or other Ecclesiastical Offence. *3 Inst. 238. Vide Post, (E. 1.)*

So the King may pardon Piracy. *3 Inst. 238.*

So the King may pardon any Crime or Offence before Attainder, or Conviction. *3 Inst. 233.*

The Judgment against a Petty Jury in an Attaint: for tho' it be the Suit of the Party, this Judgment does not give Satisfaction to the Party. *3 Inst. 237.*

The Imprisonment for two Years in a Judgment upon the *St. W. 2. 35. 3 Inst. 237.*

So all that is forfeited to the King by Attainder, he may restore by his Charter. *3 Inst. 233.*

(B) In what, not.

BUT by the *St. 2 Ed. 3. 2. conf. by 4 Ed. 3. 13.* A Charter of Pardon shall not be granted but in Cases where a Man kills another *per Infortunium*, or *Se defendendo*.

And by the *Stat. 14 Ed. 3. 15.* No Charter shall be henceforward granted of the Death of a Man, or other Felony, except in Case where the King may do it, saving his Oath of his Crown; and a Charter to the contrary shall be held for None.

Yet these Statutes do not restrain the King's Prerogative; but they are a Caution for his using it well. *Semb. cont. St. P. C. 101, &c. Acc. 4 Mod. 63. Sal. 499. (Vide Sho. 284.)*

And therefore, a Pardon with a *Non obstante* of the Statute is usual. *St. P. C. 101. a. Mo. 752. Kels. 24.*

So the King cannot, by his Pardon, discharge the Appeal of the Party. *H. P. C. 251. 3 Inst. 237.*

Or a Thing in which a Subject has a Property, or Interest. *Vide Post, (F.)*

So the King by his Pardon cannot make Restitution of Blood, where the Blood is corrupted by Attainder; for it must be done by Act of Parliament. *3 Inst. 233.*

(C)

(C) **How expounded.**

A General Pardon shall be expounded most strongly against the King, and for the Benefit of the Subject. 5 Co. 48, 50. a.

And therefore, where the King pardons *all his Subjects*; an Alien, residing as a Friend in the Kingdom, shall be pardoned: For he is a Subject, tho' not a natural Subject. *Semb. Hob. 271.*

But a Pardon to *A. of all Debts*, shall not be extended to a Debt by *A. and B.*
 3 *Inst. 239. **

A Pardon of *all Trespasses*, does not extend to the Cutting of Wood in a Forest, which amounts to Wast. *R. Jon. 279.*

[The Recognizance of a Person indicted for beating a Custom-House Officer, in *diminut. reventionum dom. Regis*, was discharged on an Act of Grace, 7 G. though such Offences are excepted. *Rex v. Spenser, in Sc. M. 1721. Bunb. 88.*]

(D) **By what Words it shall be.**

IF the King pardons Treason, Murder, Rape, &c. it shall not be allowed, if the Crime be not specified in the Charter. 3 *Inst. 236.*

So a Commission, or Grant of an Office, does not amount to a Pardon for High Treason: For a Pardon by express Words is necessary. *R. 2 Rol. 50.*

So, if the King pardons *all Felonies*; this extends to Petit Treason, as well as Murder, Manlaughter, Arson, Burglary, Robbery, Rape, &c. *Co. L. 391. a.*

So Chancemedley, *Se defendenda*, and Petit Larceny. *Ibid.*

So a Pardon of *all Felonies*, in which Treason is excepted, will be a Plea to an Indictment for Felony against him who has committed Treason. *Per Coke, Popb. cont. 2 Leo. 28.*

So a Pardon is sufficient, tho' the Words are not positive: As, a Pardon of Outlawry, *if any be*, discharges him who is outlawed. 3 *Inst. 238.*

So a Pardon of the Alienation of Lands which are holden *in Capite, ut dicitur.*
 3 *Inst. 239.*

(E) **What Offences a Pardon discharges.**(E. 1.) **Spiritual Offences, &c.**

IF a Suit be between Party and Party in the Spiritual Court *pro Salute Anima, or Reformatione Morum*, the King's Pardon, before or after the Suit begins, discharges it: For the Suit is for the King. *R. 5 Co. 51. a. R. 2 Cro. 335. 2 Bul. 182. Cont. Cro. El. 684.*

If a Suit be in the *Star-chamber*, for a Misdemeanor. 5 *Co. 51. a. 3 Inst. 238.*

So, where the Suit is in the Spiritual Court, *ex Officio.* *R. 5 Co. 51. b. R. Cro. El. 684.*

So, if a Pardon be after Sentence in the *Star-chamber*, or Spiritual Court, it discharges the Sentence, and consequent Disabilities. *R. Cro. Car. 55. Adm. 2 Cro. 335.*

If a Suit be in the Spiritual Court for Simony, a Pardon discharges the Penalty; tho' it does not enable to retain the Benefice. *R. Cro. El. 686. Mo. 916.*

If a Man be convicted for Heresy, the King by Pardon may discharge it. 3 *Inst. 238.*

So, if a Penalty be given by Statute to him who will sue for it; the King, before Suit, may pardon the whole Penalty. *Ibid.*

And the Moiety, or King's Part, after the Suit commenced. *Ibid.*

(E. 2.) **A Pardon of the Foundation discharges all dependant.**

Vide Post, (F.) So, if the King pardons the Foundation, all dependant upon it shall be pardoned: As, if a Pardon be of an Offence after a Suit for it in the Spiritual Court;

Court; no Costs shall be afterwards given: *R. 5 Co. 51. b. 2 Rol. 299. l. 2. R. Lat. 190.*

If a Pardon be after an Action commenced, and before Judgment, the Amendment shall be pardoned, tho' it was not due before Judgment: For the Delay, for which it was given, was pardoned. *Co. L. 126. b. R. 5 Co. 49.*

If there be a Pardon of a Trespass, before Outlawry for it, the King's Fine is pardoned. *2 Rol. (179.) l. 10.*

If the Contempt be pardoned, Excommunication for it is discharged. *2 Rol. (178) l. 45. Jon. 227. Cro. Car. 199.*

If a Bill in the *Star-chamber*, before Pardon, be exhibited for Matter within the Jurisdiction of the Court as to one Defendant, and for a Matter scandalous as to another, and after a Pardon of *all Contempts* the Bill is dismissed as to the Scandal with Costs; the Costs are discharged by the Pardon. *R. Hut. 79. R. Cro. Car. 68.*

Tho' a Bill depending was excepted out of the Pardon: For this relates only to Matter against the other Defendant. *R. Hut. 79.*

After an Indictment for a forcible Entry, and Restitution upon it; if the King pardons the Force, the Defendant cannot afterwards proceed upon a Traverse to the Indictment to obtain Restitution. *R. Yel. 99. 2 Cro. 149.*

After Trespass for a Battery, and before Judgment, if the King pardons the Force, there shall be no *Capiatur*. *Cro. Car. 32.*

If a Stroke be the 1 *Apr.* upon which Death ensues 10 *Apr.* and the King pardons *all Offences* till 4 *Apr.* by which the Stroke was pardoned; by Consequence the Murder shall be discharged. *R. Pl. Com. 401.*

If an Obligation be *ad parend' mandat' Ecclesie*, a Pardon, of *the Offence and Excommunication*, discharges the Obligation. *Mod. Ca. 71. 2 Lev. 36.*

If the King, after Verdict upon an Obligation and *Non est factum* pleaded, pardons *all Debts*, and Judgment be afterwards entred; yet it shall be discharged by the Pardon, and the Defendant may plead it. *3 Inst. 235.*

A Pardon of a *Debt* discharges all Suits for it; or *vice versa*. *3 Inst. 239.*

[If the Felony has it's Commencement before the Pardon takes place, but not it's Completion, the Pardon shall operate in Favour of the Prisoner, as it would have done had the Felony been complet before the Pardon. This is the true Sense of the Doctrine in *Cole's Case*. *Plowd. 401. supra. Quod nota. Nicholas's Case, 1748. Fost. 64.*]

(F) What not.

BUT a Pardon of *all Felonies*, where the Party is attainted, does not discharge the Attainder, or Execution upon it, *St. P. C. 102. b. H. P. C. 251. 3 Inst. 238.*

So a Pardon of the *Attainder*, or *Execution*, without Mention of the Felony, does not pardon the Felony. *St. P. C. 102. b. H. P. C. 251.*

Nor shall a Pardon of the Felony only, when a Man is abjured, discharge him without mentioning the Abjuration. *St. P. C. 102. b.*

So a Pardon of a *Felony of which he stands indicted* is not good, if he be not indicted. *H. P. C. 251. 3 Inst. 238.*

A Pardon of *Felony*, without Mention of Bigamy, is not good, where the Felon had prayed his Clergy, and it was objected that he was *Bigamus*, and a Writ issued to certify whether, &c. *St. P. C. 102. b.*

So a Pardon of several *jointly of all Felonies by them committed* is not good: For Felony is several. *Ibid.*

So, if it says, *by them, or any of them, committed*. *Ibid.*

So a Pardon of a *felonious Killing* does not pardon Murder. *Ray. 13. R. cont. 3 Mod. 37.*

So a Pardon *to be acquitted of the Escape of Prisoners* discharges him of a negligent, not of a voluntary Escape. *St. P. C. 102. b.*

So a Pardon of a Felony for which he was attainted, & *omnia quæ ad Dominum Regem pro feloniam prædictam pertinent*, without Words of Restitution, does not intitle him to a Debt due upon an Obligation: For that was vested in the King by the Attainder, without Office. *R. 2 Rol. (178) l. 10.*

So a Pardon of an Outlawry for Felony, does not restore his Goods or Lands forfeited by the Outlawry, without Words of Restitution. *2 Rol. (179) l. 15. Vide infra.*

So a Pardon of Felony does not restore a Disability by Corruption of Blood. *Pl. Com. 557, 8.*

Nor enable him to be Tenant by the Curtesy, if he has not Issue after, tho' he had before the Attainder. *13 H. 7. 17. a.*

[If a Man gives a Stroke, or Poison, (which till Death ensues upon it is only a Misdemeanor) and a Pardon is granted of all Misdemeanors, &c. but not of Murder or Poisoning, and afterwards the Party dies, the Felony is not pardoned. *Nicholas's Case, 1748. Fost. 64.*]

A Pardon to a Parson of a Church of *all Contempts, &c.* after Acceptance of a Plurality, does not restore him to the former Church. *R. Jon. 339.*

So a Pardon does not discharge a Thing in which the Subject has a Property, or Interest: As, if a Suit be in the Spiritual Court for Tithes, a Legacy, Contract of Matrimony, &c. *R. 5 Co. 51. a.*

Or, for Dilapidations. *R. 3 Mod. 56.*

If an Incumbent, &c. accepts a Plurality, the Interest of the Patron or King, to present, shall not be discharged by a general Pardon. *R. Cro. Car. 357, 8.*

So Trespass lies upon the *St. de Malefactoribus in Parcibus*, for the Amends and Recompence to the Owner, tho' the King has pardoned the Offence. *R. Dal. 60.*

So a Penalty upon a Conviction for Deer-stealing, is not discharged by a Pardon; for it is a Forfeiture to the Party grieved. *Semb. 1 Sal. 383, 4.*

So, after an Indictment for a Nuisance, and a Fine upon it, if there be a Pardon of *all Offences*; the Nuisance may be afterwards removed: for it is an Annoyance to the Subject. *R. Sal. 458.*

So, if the King pardons the Judgment given against the Petit Jury in an Attaint, the Party shall have Restitution: For the Right of the Party is not discharged by the Pardon. *3 Inst. 237.*

So the King cannot by his Pardon discharge a Nuisance, or an Indictment for it: For the Suit is given to the King, for the Reformation of the Nuisance. *Ibid.*

Nor, a Recognizance or Obligation to the King, for Surety of the Peace; before the Condition broken. *3 Inst. 238.*

Nor, an Action commenced *Qui tam, &c.* upon a penal Statute, except for the King's Moiety or Part. *Ibid.*

Nor, a Penalty given to the Party grieved. *Ibid.*

[Nor Penalties given between the Informer and the Poor of the Parish. *Howell v. James, T. 21 G. 2. Str. 1272.*]

Nor, a Penalty for securing a Duty, given in Recompence of a Duty taken away: As, where the *St. 6 Ann. 16.* gives 40s. *per Ann.* for Admission of every Broker, and that any not admitted, &c. acting as a Broker, shall forfeit 25*l.* The Penalty shall not be discharged by an Act of Pardon of *all Offences the King may pardon.* *R. 2 Mod. Ca. 103, 4.*

[Nor by an Act of Grace. *Ludlam v. Lopez, M. 9 G. Str. 529.*]

So a Pardon does not discharge a Thing consequent, in which the Subject has an Interest vested in him: As, if Costs are taxed in the Spiritual Court, a Pardon of *the Offence* does not discharge the Costs. *R. 5 Co. 51. b. R. 2 Cro. 159. Cro. Car. 199.*

Tho' the Party appeals after Costs taxed, by which the Sentence is suspended. *R. 5 Co. 51. b.*

Tho' Costs are awarded, and not taxed; for by the Award the Party has an Interest in them. *Cro. Car. 9. Cont. 2 Rol. 304. l. 40.*

So, if the Party appeals after Costs taxed, and then the Pardon comes, and upon the Appeal the former Sentence is annulled, and Costs given to the Appellant; these Costs are not discharged by the Pardon: For the Costs being taxed in the original Suit, the Party had a Right of Appeal, which was not taken away by the Pardon; and by Consequence has a Right to the Costs. *R. Cro. Car. 47.*

So, a Pardon, after Judgment and Costs taxed in the *Star-Chamber*, does not discharge the Costs and Damages given. *3 Inst. 238.*

So a Pardon of an Offence does not discharge a collateral Thing subsequent to it.

So, if the King pardons an *Intrusion and Entry*, this does not discharge the Profits; for he shall have Account for them against the Intruder, or Debt against his Lessee, if these Actions are not pardoned. *2 Rol. (178) R.*

[So the Crown's Share only of a Forfeiture is pardoned by an Act of General Pardon, but not the Informers on an Information filed previously. *Weddel v. Thurlow, T. 10. Ann. Parker 280.*]

[So *9 G. 3. c. 37.* which discharges Persons who have incurred Penalties, if they pay the Duty before, &c. bars only future Actions, but discharges not Defendant against whom Verdict was obtained before. *Couch v. Jefferies, T. 9 G. 3. 4 B. M. 2460.*]

If the King pardons an *Outlawry*, the Fine to the King is not discharged. *2 Rol. (179) l. 10.*

If a Man, bound in a Recognizance to the Peace, commits a Felony; a Pardon of the *Felony* does not discharge the Breach of the Recognizance. *2 Rol. (179) l. 17.*

If a Man be outlawed, a Pardon of the *Outlawry* does not give the Goods, without Words of Restitution. *3 Inst. 238.*

(G) Pardon, how granted.

IF a Man be found guilty of Homicide *Se defendendo*, he shall have a Pardon of Right. *H. P. C. 250.*

For, by the *St. Glo. 9. Les Justices assavoier au Roy, et le Roy luy en fra sa Grace, si luy pleist.*

And therefore, the Justices, upon his Request, let him to Mainprize, and give a Writ to the Chancellor containing the whole Record of his Acquittal, upon which Certificate the Chancellor shall make his Pardon, without speaking to the King. *St. P. C. 15. (2 Inst. 316.)*

But he shall not be discharged without a Charter of Pardon. *St. P. C. 15. a.*

By the *St. 27 Ed. 2. St. 1. 2.* In every Charter of Pardon, the Suggestion, and the Name of him who makes it, shall be comprized; and if the Justices find the Suggestion false, the Charter shall be disallowed.

And by *St. 5 H. 4. 2.* The Name of him who makes the Suggestion shall be specified in the Pardon; and if a Felon becomes a Thief afterwards, he forfeits 100*l.* to the King.

But the Effect of these Statutes is evaded by a *Non-obstante*. *St. P. C. 102. a.*

So, by the *St. 13 R. 2. St. 2. 1.* In a Pardon of Treason, Murder, or Rape, if the Offence be not specified, the Charter shall be disallowed. *Conf. by the St. 16 R. 2. 6.*

But a small or immaterial Mistake, in a Pardon, does not vitiate the Charter: As, if it says, in Consideration of Service by his Family *versus* the Crown, where it ought to be, *erga* the Crown. *1 Rol. 297, 8.*

If the Indictment be, *A. B. of C. in Com. D.* and the Pardon omits *in Com. D.* For *Constat de Persona*. *R. 1 Rol. 297, 8.*

If the Indictment be, *A. B. of C. Knight*, and the Pardon be of *A. B. Baronet*. *Per 3 J. Holt cont. Comb. 184.*

(H)

(H) How the Party shall take the Benefit of a Pardon.

Vide Parliament, (L. 46.)

IF a Pardon be by an Act of Parliament, in which there is no Exception, the Defendant shall take Advantage of the Pardon, without pleading. *St. P. C. 103. a. 3 Inst. 234. Pl. Com. 83. 4.*

And the Court shall give him the Benefit of the Act, tho' he waives, or refuses it. *St. P. C. 103. a.*

So he shall have the Advantage without pleading, where the Act says, that he shall take Advantage without pleading; tho' there are Exceptions in the Statute. *St. P. C. 103. a. Semb. Lane 71.*

Where the Exception goes only to particular Persons by Name. *2 Leo. 28.*

But, generally, when there are Exceptions, the Party ought to plead, and shew that he is not a Person excepted. *St. P. C. 103. a. H. P. C. 252. Cro. Car. 449. Pl. Com. 103. a. 2 Leo. 28. 3 Inst. 234.*

So a Special Pardon shall not be intended, if it be not pleaded: As, if an Entry of a Judgment, where the Plea was after a General Pardon, be, *Nil de fine quia pardonatur*; for the Pardon not being pleaded, shall not be intended. *R. 1 Leo. 300. Cro. El. 153.*

So, if a *Capiatur*, or *In Misericordia* be entred, where the Plea was after a General Pardon, it is well: for perhaps there was an Exception. *R. Cro. El. 768, 778.*

And if there be a General Pardon, in which there are Exceptions, the Court need not take Notice of it, if it be not pleaded. *Lane 71.*

So, if a Man has a Charter of Pardon from the King, he ought to plead it in Bar of the Indictment. *1 Rol. 297.*

So he ought to plead it, shewing his Charter *Sub pede Sigilli*. *St. P. C. 103. a. H. P. C. 252.*

And if he pleads *Not guilty*, he waives his Pardon. *R. Kels. 25.*

Yet, if a Pardon be of Murder and Manslaughter, and he pleads *Not Guilty* to the Indictment for Murder, and is found guilty of Manslaughter, he shall afterwards have the Benefit of the Pardon. *Dub. Kels. 25.*

[Defendant in an Information for Maihem shall have the Benefit of an Act of Grace, though he did not insist on it at his Trial; but shall pay Prosecutor full Costs. *Rex v. Haines, P. 21 G. 2. 1 Wils. 214.*]

So, if there be a Variance in the Addition, &c. between the Charter and the Indictment, he ought to aver that he is the same Person. *H. P. C. 253.*

And if the Pardon be between the Verdict and the Judgment, he may plead it, tho' he has not a Day in Court, for Necessity; for he cannot have an *Audita Querela*, or *Scire facias*, against the King. *3 Inst. 235.*

So, by the *St. 10 Ed. 3. 3*. A Man pardoned ought to find six sufficient Mainperners, before the Sheriff and Coroners of the County where the Felony was done; and the Mainprises shall be sealed with their Seal, and returned into Chancery; otherwise the Charter shall be holden for none.—But this Statute is now repealed by the *St. 5 & 6 W. & M. 13.*

And therefore, when he pleads his Pardon, he ought to have a Writ of Allowance, testifying that he has found Sureties according to the Statute. *4 Mod. 62. Ray. 13. Per Holt Sho. 283. Sal. 499. 3 Inst. 235.*

Or he may plead the Pardon, with an Averment that he has found Sureties, *prout patet per Recordum*. *3 Inst. 235.*

So, by the *St. 5 & 6 W. & M. 13.* which repeals the *St. 10 Ed. 3.* The Justices, before whom a Pardon of Felony is pleaded, may at Discretion remand the Party to Prison, till he enter into Recognizance with two Sureties, or if an Infant, or Covert, till they find two Sureties for good Behaviour for seven Years.

[There has been no Instance, since this Statute of the Court's requiring Recognizance for the good Behaviour of a Person pardoned for Murder. *Rex v. Chetwynd, H. 17 G. 2. Str. 1203.*]

But

But there needs no Writ of Allowance, if there be a special *Non-obstante*.
H. P. C. 250. Cro. Car. 596, 7.

So, if he has no Writ of Allowance, he shall not be hanged. H. P. C. 253.

So it is not necessary for Treason. R. Cro. El. 814.

So, by the St. 10 Ed. 3. 3. If he finds Surety for his good Behaviour, and after Mainprize does contrary to the Peace, the Charter shall be held for None.
(Repealed by the St. 5 & 6 W. & M. 13.)

And therefore, upon the Peace broken, a *Scire facias* lies to repeal the Patent; and he shall be hanged for his first Offence. H. P. C. 252.

So, if it appears by an Indictment confessed in the same Court where he pleads his Pardon, that he has broken the Peace; the Charter shall be disallowed. St. P. C. 104. a.

But where there is a special *Non-obstante* of the Statute in the Charter, it shall be good, tho' the Peace be broken. H. P. C. 252.

So, if a Man be outlawed in an Appeal, and has a Pardon, he ought to sue a *Scire facias*, against the Appellant, before Allowance of the Pardon. St. P. C. 104. b.

[On a Pardon for a Misdemeanor, the Defendant shall not be put to the Bar, nor plead it on his Knees. Rex v. Hales, M. 2 G. 2. Str. 816.]

(1) Exception in a Pardon.

IF an Offence be excepted, a corporal or pecuniary Penalty, consequent to it, is also excepted. R. 5 Co. 47. a.

If an Offence and Fraud, in not collecting or paying the Revenue, or other Money to the King, be excepted; a Penalty for importing prohibited Goods will be excepted. Dub. 3 Mod. 241.

If Accounts are excepted in an Act of Pardon, a Sum due upon an Account stated is excepted. R. 3 Lev. 135.

So a Debt for Rent to the King, shall be excepted, tho' by Negligence of the Clerk it was not in Charge in the *Exchequer*. R. Cro. Car. 349.

If a Bond to pay a Debt, &c. be excepted, a Recognizance to pay it shall be within the Exception. R. Hard. 369.

If Burglary be excepted, a Man attainted for Burglary is within the Exception. 3 Inst. 234.

But where an Exception goes only to the Penalty, or Forfeiture, Nothing is excepted, but what is necessary for Recovery of the Penalty; as, the Prosecution: for the Imprisonment and all corporal Punishment are pardoned. R. 5 Co. 47. a.

If all Offences in taking away, or purloining the King's Goods, Money, &c. are excepted, Felony in purloining them will be pardoned. Hard. 367. (Cro. Car. 449.)

An Exception of Murder does not extend to a *Felo de se*. R. 1 Lev. 8.

P A R I S H.

(A) Parish, When taken for a Diocese.

PAROECIA signified antiently the Precinct or Diocese of the Bishop.
Seld. de Dec. 80. [Edit. 1726. 3 Vol. 1120.]

(B) Parish.

(B. 1.) What shall be.

IN the Time of *Honorius*, Archbishop of *Canterbury*, England was divided into Parishes. *Camb. Brit. in the Introduction. Cont. Seld. H. of T. 3 Vol. 1208.*

Every Precinct which belongs to the same parochial Church, is one Parish. *Nom. verb. Parish.*

A Parish was a Precinct within a Diocese, which comprehended one or more Vill, or a lesser Territory. *Seld. de Dec. c. 6. f. 3. p. 80. 3 Vol. 1120.*

For several Vill may be contained in the same Parish.

And therefore, *Parochia* is said to be, *Locus in quo Populus alicujus Ecclesie degit.* 5 Co. 67. a.

So, *plures Hamletti potuerunt pertinere ad unam Parochiam.* Fl. 4. c. 15. S. 9.

So *plures Parochie potuerunt pertinere ad unam Villam.* Fl. 4. c. 15. S. 9.

(B. 2.) What not.

But if a Place has not a Church, Churchwardens, and *Sacramentalia*, it is not properly a Parish.

So it shall not be a Parish by Reputation within the *St. 43 El. 2.* if it had not a parochial Chapel, Chapel-Wardens, and *Sacramentalia*, at the Time of the Statute. *R. Sal. 501.*

Tho' it had a distinct Overseer, and maintained its own Poor. *Sal. 501.*

Tho' it had also a Chapel-Warden, by whom Rates are collected there, and paid to another Parish. *Ibid.*

So Land shall not be within any Parish, unless by Prescription, or Act of Parliament. *Sti. 137.*

So a Place, &c. may be extraparochial.

Yet an extraparochial Place is within a County. *Per Holt Skin. 685.*

(C) Vill.

(C. 1.) What shall be.

VILLA est ex pluribus Mansionibus Vicinata. Co. L. 115. b.

[A Vill must consist of ten Families, or have a Constable, or at least the Reputation of a Vill. *Rex v. Denham, P. 8 G. 2. B. S. C. No. 11. Str. 1004. Rex v. Grafton, P. 10 G. 2. B. S. C. No. 31. Str. 1071.*]

And a Vill is the Genus, which comprehends several Species. Co. L. 115. b.

For every Borough is a Vill; but not *é converso.* *Ibid.*

So every Parish shall be intended to be but one Vill, if it does not appear to the contrary. Co. L. 125. b.

So every Place shall be intended a Vill *primâ facie*, if it does not appear to the contrary. Co. L. 125. b. R. 2 Cro. 263. R. Sal. 501.

And therefore, if a Fine be levied of Lands in *A.* and the Parish of *A.* comprehends several Vills, *A, B, &c.* nothing passes but Land in the Vill of *A.* and not Land in *B.* or other Vill within the Parish of *A.* R. 2 Cro. 120. *Vide Fine. (E. 4.)*

But a Fine of Land in the Parish of *A.* passes Land in all the Vill of the same Parish. R. 1 Vent. 170.

So a Fine in *A.* which has a Superintendency and Constable-wick, which extend over several Vills, passes Land in those Vill. 1 Vent. 170.

If all the Houses in a Borough are decayed, yet it continues a Vill. Co. L. 115. b.

(C. 2.) What not.

But it shall not be accounted a Vill where there is not, and never was a parochial Church. Co. L. 115. b.

So one Vill cannot be within another Vill: And therefore, if in *Replevin*, the Taking is supposed in a Warren in *A.* and the Defendant avows for Rent out of a Manor, which extends to *A.* and *B.* and the Plaintiff alledges an Assignment of Dower out of *B.* and avers that the Warren in *B.* was within *A.* This is bad; for *B.* which ought to be intended a Vill, cannot be within *A.* which ought also to be intended a Vill. *R. 1 Sid. 10.*

[An Extra-parochial Place, consisting of two Houses, &c. 300 Acres of Land worth 300 *l.* per Annum, belonging to, and in the Occupation of several Persons. *Rex v. Denham, P. 8 G. 2. B. S. C. No. 11. Str. 1004.*]

[An extra-parochial Place, a Manor, formerly a Nobleman's Seat and Park, since converted into Farms, and having five Houses occupied by five Tenants. *Rex v. Grafton, P. 10 G. 2. B. S. C. No. 31. Str. 1071.*]

[Extra-parochial Place, consisting of one capital Messuage, two old Cottages, one new one, and one Tenement, Part of the capital Messuage, all let to one, and inhabited by him and his Under-tenants. *Rex v. Showler, T. 3 G. 3. B. M. 1391.*]

P A R K.

Vide Chase, (C.)

P A R L I A M E N T.

(A) It's Name.

THE Parliament is the highest and most honourable and absolute Court of Justice within the Realm, composed of the King and Lords and Commons of the Realm. *Co. L. 109. b. Dy. 60. a.*

And is known by several Names. *4 Inst. 2.*

(B) It's Antiquity.

THE Parliament, *si Antiquitatem spectes est antiquissima, si Dignitatem est honoratissima, si Jurisdictionem est capacissima. 9 Co Praef.*

Tempore Inae & aliorum Regum Saxonum fuerat Conventus Sapientum Spirituum & Temporalium. 9 Co. Praef.

(C) When it shall be summoned.

BY the *St. 4 Ed. 3. 14.* confirmed by *36 Ed. 3. 10.* A Parliament shall be holden every Year once, or more often, if need be.

By the *St. 16 Car. 1. 1.* A Parliament was to be held every third Year.—But this was repealed by the *St. 16 Car. 2. 1.*

And by the same *St. 16 Car. 2. 1.* it was enacted, that Parliaments shall not be intermitted, or discontinued above three Years at most: but within three Years after the Determination of any Parliament, or if Occasion oftner, the King shall issue Writs for a new Parliament.

So, by the *St. 1 W. & M. St. 2. 2.* it was declared, as the Right of the Subject, that Parliaments ought to be held frequently.

And by the *St. 6 W. & M. 2.* A Parliament shall be holden once in three Years at least: And after the Determination of every Parliament legal Writs under the Great Seal shall be issued for calling a new Parliament.*

* [But now, by *St. 1 G. 1.*

St. 2. 38. Parliaments shall and may have Continuance for seven Years, and no longer, to be accounted from the Day on which by the Writ of Summons the Parliament shall be appointed to meet, unless sooner dissolved by his Majesty.]

A Writ

A Writ of Summons issues from *Chancery*, by Advice of the King's Council, for summoning the Parliament to assemble at the Return of the Writ. 4 *Inst.* 4. *Vide Post*, (D. 8.—E. 1.)

But by the *St. 12 Car. 2. 1.* it was enacted, That the Houses then sitting should be the Houses of Parliament, notwithstanding any Want of a Writ of Summons or Defect therein, or other Defect.

So by the *St. 1 W. & M. 1.*

By the *St. 7 & 8 W. 3. 15.* No Parliament shall be dissolved by the Demise of the King, but shall immediately meet and sit for six Months, unless sooner prorogued, or dissolved by the Successor.

If no Parliament be then in Being, the last preceding Parliament shall immediately convene, and sit as aforesaid.

(D) What Persons compose it.

THE Parliament consists of the King, Lords, and Commons. *Co. L. 109. b. Sal. 510.*

Of the King and three Estates of the Realm, viz. The Lords Spiritual and Temporal, and the Commons. 4 *Inst.* 1. *Ha. Parl. 1.*

Of the King and two Estates. *By the King at a Parliament, 18 Jac. Rusb. 21.*

But it is not necessary, that the Lords Spiritual or Temporal should always assent to every Act; for if all the Lords Spiritual are absent, an Act by Assent of the King, the other Lords and Commons, will be good. *Vide Post*, (G. 10.—R. 3.)

So, if all the Lords Temporal are absent. *Vide post*, (R. 3.)

So, if the Lords Spiritual are present, and all dissent. *Ibid.*

The Lords and Commons antiently sat together. 4 *Inst.* 2. 2 *Bul.* 173. *Cont. Pref. Cot. Abr. 5. Vide Post*, (E. 2.)

All the Lords ought to be summoned. 4 *Inst.* 1, 4.

And all the Knights for Shires, Citizens and Burgesies ought to be elected, which are 493. 4 *Inst.* 1.

And by the *St. 5 Ann. 8.* at the Union, 16 Peers and 45 Commons are added for Scotland.

(D. 1.) The King.

The King is *Caput Parliamenti*. 4 *Inst.* 3. *Ha. Parl. 1. in Marg.*

(D. 2.) The Lords Spiritual.

The Lords Spiritual, viz. the Archbishops and Bishops sit in Parliament, by reason of their Baronies; for they hold their Bishopricks *per Baroniam*. 4 *Inst.* 1, 45.

And they ought to be summoned *ex debito Justitiæ*. 4 *Inst.* 1.

The Summons to the Lords Spiritual names them by their Christian Name, and their Name of Dignity. 4 *Inst.* 5.

But an Addition of the Surname does not vitiate the Writ. *Ibid.*

A Bishop elect may be summoned as a Lord of Parliament. 4 *Inst.* 47.

A Summons to an Abbot or Prior named him by his Dignity only. 4 *Inst.* 5.

An Abbot, &c. tho' summoned, needed not to have come to Parliament, unless he held *per Baroniam*; for he was dead in Law. 4 *Inst.* 44, 5.

So, tho' he had often served in Parliament. 4 *Inst.* 45.

And where the King granted to such an one to be a Lord Spiritual of Parliament, it was void. *Ibid.*

(D. 3.) The Lords Temporal.

Every Duke, Marquiss, Earl, Viscount, and Baron of England, by Creation or Descent, ought to be summoned to Parliament *ex debito Justitiæ*. 4 *Inst.* 1.

If he be of full Age. 4 *Inst.* 1.

A Summons to a Temporal Baron mentions his Christian Name, and his Dignity. 4 *Inst.* 5.

If he be a Knight, that is frequently added. *Ibid.*

And if his Surname be added, it does not vitiate the Writ. *Ibid.*

If a Knight or Esquire be summoned by Writ to Parliament, he cannot refuse. 4 *Inst.* 44.

(D. 4.) The Commons.

The Commons make the third Estate of Parliament, and consist of Knights of Shires, Citizens, and Burgeffes. 4 *Inst.* 1.

And all ought to be elected by Writ *ex debito Justitiæ*. *Ibid.*

And they represent all the Commons of the Realm. *Ibid.*

The Beginning of the Commons Attendance in Parliament seems to have been since the 40th Year of H. 3. *Cot. Abr. Præf.* 11, 12.

The first Writ for the Election of Knights, Citizens, and Burgeffes, seems to have been in the 49 H. 3. *Cot. Abr. Præf.* 13. b.

A Writ goes to the Sheriff of every County in England and Wales, commanding, *Quod duos Milites gladiis cinctos magis idoneos & discretos Comitatus tui, &c. eligi fac'*, &c. Co. L. 109. b. 4 *Inst.* 6. (D. 5.) Knights of Shires.

Anno 49 H. 3. A Writ of Summons was directed to the Sheriff of every County, *Quod venire fac' duos de legalioribus & discretior' Militibus singulorum Comitatum*. *Dug. Sum. Parl.* 3 *Cot. Ab. Præf.* 13. b.

And from that Time, the Counties of Bedford, Berks, Bucks, Cambridge, Kent, Cornwall, Cumberland, Derby, Devon, Dorset, York, Essex, Gloucester, Hereford, Hertford, Huntingdon, Lancaster, Leicester, Lincoln, Middlesex, Norfolk, Northampton, Northumberland, Nottingham, Oxford, Rutland, Salop, Somerset, Southampton, Stafford, Suffolk, Surry, Sussex, Warwick, Westmorland, Wilts and Worcester, have sent each of them two Knights.

By the St. 27 H. 8. 26. S. 29. Every County in Wales shall send one Knight to Parliament.

By the St. 34 & 35 H. 8. 13. The County Palatine of Chester henceforth shall have two Knights, to be elected by Process from the Chancellor of England, to the Chamberlain of Chester, his Lieutenant or Deputy.

By the St. 25 Car. 2. 9. The County Palatine of Durham shall have two Knights in Parliament, to be chosen on a Writ from the Chancellor, &c. to the Bishop of Durham, or his Temporal Chancellor.

A Writ to the Sheriff of every County commands, *Quod de qualibet Civitate Comitatus tui duos Cives, &c.* 4 *Inst.* 6. Co. L. 109. b. (D. 6.) Citizens.

Anno 49 H. 3. A Writ of Summons was directed to the Citizens of York, and required them to send to Parliament 2 *de discretioribus, legalioribus, & prioribus Civibus, &c.* *Dug. Sum. Parl.* 3.

Citizens and Burgeffes were not afterwards summoned with the Knights of Shires to Parliament, till 23 Ed. 1. but the King sent them Commissioners, who assessed or levied upon them the same, or a greater Tax than was granted by the Knights of Shires. *Bra. Treat. de Burg.* 25 ad 32. *Dugdale mentions the second Summons*, 22 Ed. 1. *Dug. Sum. Parl.* 7.

A Writ to the Sheriff of every County commands, *Quod de quolibet Burgo duos Burgeses de discretioribus & magis sufficientibus, &c.* 1 *Inst.* 110. (D. 7.) Burgeffes.

So it was done Anno 49 H. 3. *Dug. Sum. Parl.* 3. A Writ was directed to the Burgeffes of every Borough.

Burgeffes were not afterwards summoned to Parliament till 22 or 23 Ed. 1. *Bra. Treat. de Burg.* 25, &c. *Dug. Sum. Parl.* 7.

By the *St.* 27 *H.* 8. 26. *S.* 29. The Counties of *Brecknock, Denbigh,* and every Shire in *Wales* shall send to Parliament one Knight, and every Shire Town (except *Merioneth*) one Burgefs.

(D. 8.)
Election.
Writ of Election.

The Writ for Summons, or Election, shall have no material Alteration, or Addition, without Act of Parliament. 4 *Inst.* 10.

By the *St.* 7 & 8 *W.* 3. 25. There shall be forty Days between the *Tefte* and Return of the Writ of Summons.

And the Lord Chancellor, &c. shall issue Writs for the Election with as much Expedition as may be.

And as well on calling a new, as on a Vacancy in Parliament, the Writs shall be delivered to the proper Officer, to whom the Execution of them belongs, and no other.

Before the Writ of Summons issues, the King gives a Warrant to the Chancellor, by Bill signed, for issuing the Writs. *Vide D'Ewes* 2. The Form of the Warrant, *Vide in D'Ewes* 2.

If the Person elected dies, or makes Election for another Place, the Speaker issues a Warrant to the Clerk of the Crown, upon Motion, to make a Writ for another Election at the vacant Place. 29 *Nov.* 1710.

So, if the Person elected accepts an Office, be made a Peer, &c. *Ibid.*

Tho' there be a Petition depending for the Election at the same Place, if it be not against him who dies, &c. 30 *Nov.* 1710.

Or, there was not any Candidate, but the Persons who are returned. *Ibid.*

The Writ of Summons shall be, *Tefte* The King.

Or, *Tefte* The Chief Justice, or Guardian of the Realm. 4 *Inst.* 6.

[By *Stat.* 10 *G.* 3. c. 41. The Speaker, during Recess of Parliament, may issue his Warrant to the Clerk of the Crown, to make out a Writ for electing a Member in the Room of one dead during Recess, on the Death being certified under the Hands of two Members. He must give Notice in the *Gazette*, and not issue Warrant till fourteen Days after; nor unless the Return of the deceased Member was brought in fifteen Days before the End of the Session preceeding his Death.]

(D. 9.)
Who cannot
be elected,
and who may.

A Man, attainted for Treason or Felony, cannot be elected; for the Writ says, *magis idoneos & discretos eligi fac'*, &c. 4 *Inst.* 47, 8.

So, *Temp.* *H.* 7. Persons outlawed for Treason could not come into Parliament, till their Attainders were reversed. *R. Bac. H.* 7. 13.

Nor, Persons outlawed after Judgment, or before, in a Civil Action. *R. per all the J.* 1 *And.* 293.

Nor, Persons taken in Execution upon a Judgment. *Mo.* 57.

An Alien cannot be elected to Parliament, or, if he be elected, shall not sit. 4 *Inst.* 47.

Nor, a Denizen. *Ibid.*

But a Man, when naturalized, may. *Ibid.*

A Clergyman cannot be elected; for he is represented in Convocation. 4 *Inst.* 47. *Mo.* 783.

Tho' he be of the Inferior Order. 4 *Inst.* 47.

By the *St.* 46 *Ed.* 3. No. 13. A Man of the Law, following Business in the King's Court, and Sheriffs, shall not be elected for Counties. *Cot. Abr. Pref.* 7. *Vide infra.*

A Judge of *B. R.* or *C. B.* or a Baron of the *Exchequer* cannot be elected; for they are Assistants to the Peers. 4 *Inst.* 47. *Tamen Thorp*, a Baron of the *Exchequer*, was Speaker to the Commons, 31 *H.* 6.

By the *St.* 5 & 6 *W.* & *M.* 7. *Seff.* 2. No Member of the House of Commons shall be, directly or indirectly, concerned in farming, collecting, or managing of Duties given by Lottery, or other Act, except Commissioners of the Treasury, Officers of the Customs or Excise, and Commissioners of the Land Tax.

But he may be a Member of the Corporation erected by the *St.* 5 & 6 *W.* & *M.* 14. *Seff.* 2.

He

He may have a Judicial Place in the Dutchy Court, or other Court, Ecclesiastical or Civil. 4 *Inst.* 47.

By the *St.* 12 & 13 *W.* 3. 2. After Limitation in the House of *Hanover*, No Person in an Office or Place of Profit under the King, or who receives a Pension from the Crown, shall be capable of serving as a Member of the House of Commons.—But by the *St.* 4 & 5 *Ann.* 8. this was repealed.

By the *St.* 4 & 5 *Ann.* 8. No Person, who, in his own Name, or in Trust, hath any new Office or Place of Profit under the Crown, then after created, no Commissioner, Sub-Commissioner, Secretary, or Receiver of the Prizes, Comptroller of the Accounts of the Army, Commissioner of Transports, Sick and wounded, for Wine Licences, nor Agent for any Regiment, nor Governor, or Deputy Governor of the Plantations, nor Commissioner of the Navy for the Out-Ports, nor any having a Pension from the Crown during Pleasure, shall be capable of being elected a Member of the House of Commons. *

Nor by the *St.* 6 *Ann.* 7. after the Union.

And by *that Statute*, All disabled to sit in the Parliament of *England* shall be disabled in the Parliament of *Great Britain*.

Nor, by the *St.* 1 *Geo.* 56. Any Person, having a Pension from the Crown for a Term of Years in his own Name, or in Trust.

[By *Stat.* 15 *G.* 2. c. 22. Commissioners of Revenue in *Ireland*, of the Navy, Clerks in the following Offices; Treasury, Auditors, Tellers, or Chancellor of Exchequers Offices, Admiralty, Paymaster of Army or Navy, Secretaries of State, Salt, Stamps, Appeals, Wine-Licence, Hackney-Coaches, Hawkers and Pedlars, or having Office in *Minorca* or *Gibraltar*, (except Commission-Officers in Regiments,) are excluded from being Members of the House of Commons.

By the *St.* 9 *Ann.* 5. No Person shall be capable, &c. who shall not have a Freehold or Copyhold for his own Life, or a greater Estate in Law or Equity, and for his own Use, of the annual Value of 600*l.* if a Knight; 300*l.* if a Burgeſſes, &c. in *England*, ‡ above Reprises and all Incumbrances that may affect the same. ||

An Infant within the Age of 21 Years cannot be elected. 4 *Inst.* 47.—And by the *St.* 7 & 8 *W.* 3. 25. The Election of an Infant is void, and if being returned he sit, he shall incur the Penalty, as if he sat without being returned.

By the *St.* 4 & 5 *Ann.* 8. confirmed after the Union by the *St.* 6 *Ann.* 7. If any accept any Office of Profit from the Crown, while a Member, his Election shall be void, but he may be capable of being again elected.

By the *St.* 1 *H.* 5. 1. Knights, &c. shall not be chosen, unless resident within the Shire the Day of the Date of the Writ of Summons.—By the *St.* 8 *H.* 6. 7. unless dwelling, and resident.

And by the *St.* 1 *H.* 5. 1. Citizens and Burgeſſes chosen shall be resident, dwelling, and free in the City or Borough, and no other.

By the *St.* 23 *H.* 6. 14. Knights of Shires shall be notable Knights of the same County, or such notable Esquires and Gentlemen born of the same County, as shall be able to be Knights, and not any of the Degree of Yeoman.

By the *St.* 5 *El.* 1. None shall enter into the Parliament-House till he hath taken the Oath of Supremacy, 1 *El.* before the Lord Steward or Deputy.

Nor, by the *St.* 30 *Car.* 2. 1 *Seſſ.* 2. After the Speaker chosen, till he take the Oaths of Allegiance and Supremacy, and subscribe and repeat the Declaration against Popery, between nine in the Morning and four in the Afternoon, at the Table in the Middle of the House in a full House, in such Order as the House is called over, on Pain of 500*l.* and being a Popish Recusant convict, and incapable of Office, &c. *Vide Poſt*, (E. 4.)

Nor, by the *St.* 7 & 8 *W.* & *M.* 27. 'Till at the Time he takes the Oaths, and subscribes the Declaration in the *St.* 1 *W.* & *M.* 8. he also subscribe the Association.—But by the *St.* 1 *Ann.* *Seſſ.* 1. 22. The Association is taken away.

Nor, by the *St.* 13 & 14 *W.* 3. 6. and 1 *Ann.* *Seſſ.* 1. 22. 'Till he take and subscribe the Abjuration Oath.

By the *St.* 7 *W.* 3. 4. Any Person, who after the *Teſte*, or the ordering of any Writ, or after the Vacancy, by himself or others, or by any Means, before his

*[The Election is declared void, and he shall not sit or vote, on Pain of 500*l.*]

†[*Wales*, or *Berwick*.
|| [Provided, not to extend to the eldest Son of a Peer, or of a Person qualified to serve as Knight of a Shire.]

his Election, gives to any Voter, or to any County, City, Town, &c. in general, any Money, Meat, Drink, or Present, &c. is disabled to serve upon such Election.

Treating a Corporation on the Day of Election, is a Breach of this Statute. *R. in the Case of Sloan at Thetford, 26 Jan. 1699.*

But all others, under the Degree of a Peer of the Realm, may be elected. *4 Inst. 47.*

As, a Banneret. *Ibid.*

The Heir apparent of a Peer. *Vide supra in Marg. ||*

So he, who is Judge in the Dutchy, or other Court. *4 Inst. 47.*

And the Attorney or Solicitor-General. *4 Inst. 48. cont.*

Every one professing or practising the Common Law, though there was an Ordinance of the Peers in Parliament, *46 Ed. 3. cont. 4 Inst. 48. Vide supra.*

A Mayor, or Bailiff of a Corporation. *Cont. Bro. 38 H. 8. Tit. Parl. 7. Acc. 4 Inst. 48.*

A Sheriff of one County may be elected in another; as, *1 Car.* The Sheriff of *Buckinghamshire* was elected in *Norfolk.* *4 Inst. 48.*

And the King by his Charter cannot exempt a Man from being elected; for such Charter of Exemption is void. *4 Inst. 49.*

[The *Stat. 2 G. 2. c. 24.* to prevent Bribery, extends to all Persons, tho' they are not Candidates, nor employed by them. *Philipps v. Philipps, T. 11 & 12 G. 2. Andr. 248.*]

[By *Stat. 33 G. 2. c. 20.* Members, before they vote or sit in Parliament, shall deliver in a Schedule of their Qualification according to *9 Ann.* and swear to it; except eldest Sons of Peers, or of Persons qualified to be Knights of a Shire, Members for Universities, or *Scotch* Members.

[*Stat. 14 G. 3. c. 58.* repeals *Stat. 1 H. 5.* and so much of *8th, 10th, and 23d H. 6.* as relates to the Residence of Electors or elected.]

(D. 10.)
Who shall be
Electors, who
not.

By the *St. 1 H. 5. 1.* Choosers of Knights, &c. shall be resident within the Shire the Day of the Date of the Writ of Summons. By the *St. 8 H. 6. 7.* shall be dwelling and resident, &c.

By the *St. 8 H. 6. 7.* Every one of the Electors shall have Lands or Tenements of the Value of *40s. per Ann.* at least above Charges: And the Sheriff shall have Power to examine on the Evangelists, how much he may expend by the Year.

By the *St. 10 H. 6. 2.* He shall have *40s. per Ann.* Freehold in the same County.

By the *St. 7 & 8 W. 3. 25.* Before he polls, if required by any Candidate, he shall swear he hath in that County Freehold Lands or Hereditaments of *40s. per Ann.* and hath not polled before. And for Perjury or Subornation, be subject to the Penalties of the *St. 5 El. **

* [Vide in the
St. 18 Geo. 2
18. the Oath
altered and
enlarged.]

By the *St. 7 & 8 W. 3. 34.* A Quaker, instead of an Oath in the usual Form, shall be permitted to make Affirmation in all Courts and Places, &c.—But the Preamble speaks of Cafes, where Process issues for Contempt.—*Vide the St. 10 Ann. 23. †*

† [By which
the Affirma-
tion is to be
admitted upon
Elections.]

If a Man has a Freehold in *Antient Demesne*, he may elect. *Semb. cont. 4 Inst. 4, 5.*

By the *St. 7 & 8 W. 3. 25.* None shall vote by Reason of any Trust, or Mortgage, unless in the actual Possession, or Receipt of the Profits; but a Mortgagor, or *Cestuy que Trust* in Possession shall vote.

By the *same Statute*, Conveyances of any Messuage, Lands, &c. in any County, Borough, &c. to multiply Votes, are void; and but one single Voice shall be admitted for one House or Tenement.

By the *St. 10 Ann. 23.* Such a Conveyance, on Condition, &c. shall be absolute; and he who executes, or, being privy to such Purpose, prepares it, or votes by Virtue of it for a Knight of the Shire, forfeits *40 l.*

[By

[By 13 G. 2. c. 20. The Stat. 10 Ann. c. 23. and 12 Ann. Stat. 1. c. 5. for preventing fraudulent Conveyances, and Persons voting who have not been in Possession of 40 s. are extended to Freeholders in Towns that are Counties of themselves.]

By the St. 7 & 8 W. 3. 25. None under the Age of twenty-one shall be admitted to give a Vote, &c.

By the St. 5 & 6 W. & M. 20. S. 48. No Officer in the Excise shall perswade or dissuade any to vote, &c. on Pain of 100 l. a Moiety to the Poor, a Moiety to the Informer, and of Incapacity to enjoy any Office of Excise, or Trust.

No Peer hath a Right to Vote at Elections. R. Nem. Con. 14 Dec. 1699. R. Nem. Con. 13 Feb. 1700. R. 24 Oct. 1702.

If a Peer, or Lord Lieutenant of a County concerns himself in Elections, it is an Infringement of the Liberties of the Commons. R. Nem. Con. 15 Feb. 1700. R. 24 Oct. 1702.

By the St. 7 & 8 W. 3. 27. None refusing the Oaths in the St. 1 W. & M. 8. or, being a Quaker, the Declaration of Fidelity in the St. 1 W. & M. 18. which the Sheriff or Chief Officer, &c. at the Request of any Candidate may administer, shall vote, &c.

Nor, by the St. 6 Ann. 23. Refusing the Oath of Abjuration, or, if a Quaker, to declare the Effect thereof.

If a Man, who has a Right to vote for two, gives a single Vote, he cannot afterwards give a second Vote for another. R. in a Committee: But the Consideration of it postponed by the House. 21 Dec. 1699.

By the St. 23 H. 6. 15. Citizens, and Burgeses, have always been chosen by Citizens, and Burgeses, and no other.

And, by the same Statute, The Precept to Cities and Boroughs shall be, to choose by Citizens of the same City Citizens, and if a Borough, by Burgeses of the same.

And, by Common Right, in all Boroughs the Election ought to be by all the Burgeses, where there is no Prescription, or constant Usage Time out of Mind, &c. to the Contrary. R. 8 May 1626. Vide Brady Tr. 60.

And therefore, if the King grant to a Borough by Charter, That a select Number shall elect, &c. this does not take away the Right of the other Burgeses. 4 Inst. 48.

So a By-law by the Corporation itself, That a select Number shall elect, does not avail. Ibid.

In a Borough which has no Charter, or Burgeses, nor any Custom for it, the Election shall be by all the Householders, and not by Freeholders only. R. 21 May 22 Jac. Vide Brady 60, &c.

But, by an original Grant, or Custom, an Election may be by a select Number. R. 4 Inst. 49.

So, by Custom or Prescription, it may be by Burgage Tenants. Vide Post, (D. 12.)

[By Stat. 18 G. 2. c. 18. Every Elector, if required, shall swear that he has a Freehold of 40 s. per Annum, and what and where, and has had it a Year, or come to it by Descent, Marriage, Marriage-Settlement, Devise or Promotion; that it was not granted on Purpose to qualify; his Place of Abode; that he is twenty-one, and has not polled before.]

[By ff. 3 & 4. Elector must have been assessed to the Land-tax within twelve Months before, (except for Chambers, &c. not usually assessed) and Duplicates of Assessment shall be kept among the Records of Quarter-Session.]

[By ff. 5. Person not qualified voting, or voting more than once, forfeits 40 l.]

[By ff. 6. Taxes and Rates are not to be deemed Charges within the Meaning of this Act.]

[In an Action on 2 G. 2. for Bribery, it is not necessary to prove that the Party bribed had a Right to vote; if Defendant gave the Money, saw him vote, and his vote was not controverted, it is sufficient. Rigg v. Curgenven, H. 9 G. 3. 2 Wils. 395.]

[*St. 19 G. 2. c. 28.* Regulates the Elections of Cities and Towns, which are Counties in themselves.]

[By *St. 31 G. 2. c. 14.* Persons holding their Estates by Copy of Court-roll, are not thereby intitled to vote for Counties; if they vote, they forfeit 50*l.* to any Candidate for whom they did not vote.]

[By *St. 3 G. 3. c. 15.* A Freeman shall not vote, unless admitted twelve Months before first Day of Election, except intitled to Freedom by Birth, Marriage or Servitude.]

[*Stat. 3 G. 3. c. 24.*] Requires Annuities to be registered with the Clerk of the Peace, twelve Months before the first Day of Election.]

[*Stat. 11 G. 3. c. 55.* Incapacitates certain Persons (guilty of corrupt Practices) by Name, from voting at any Election for Parliament; and enacts, that all Freeholders of 40*s.* in the Rape of *Bramber* in *Suffex*, shall have Votes for *New Shoreham*.]

As to the Determination of the Right of Elections, *Vide Post*, (E. 15.—F. 3.)

(D. 11.)
The Manner
of Election.
In a County.
Vide Ant.
(D. 10.)

By the *St. 7 H. 4. 15.* At the next County Court after Delivery of the Writ, Proclamation shall be made in full County of the Day and Place of Parliament, and all present duly summoned, or others, shall then in full County proceed to Election, freely and indifferently.

By the *St. 23 H. 6. 15.* The Election shall be made in full County between eight and eleven in the Forenoon.

But it is sufficient, if the Election be begun within those Hours. 4 *Inst.* 48.

By the *St. 7 & 8 W. 3. 25.* The Sheriff shall proceed to an Election, at the next County Court after the Receipt of the Writ, unless it be held on the Day of such Receipt, or in six Days after: For then he may adjourn the Court to some convenient Day, giving ten Days Notice of the Time and Place.

And by the *same Statute*, The Sheriff shall hold the County Court for an Election at the most publick Place, where it hath been most usually for forty Years past. *Vide infra.*

And the County Court for the County of *York*, formerly held on a *Monday*, shall be held on a *Wednesday*.

But the Sheriff of *Southampton*, at the Request of any Candidate, may adjourn from *Winchester*, after all are polled, to the Isle of *Wight*.

It may be judged, who are elected, by Hearing of the Voices, or View of the Hands held up. *Pl. Com.* 123, 126. *a.*

But if the Freeholders demand a Poll, the Sheriff ought not to refuse it; for upon View, he cannot judge who have Freeholds. 4 *Inst.* 48.

And he ought not to refuse it, tho' the Party waives it. *Ibid.*

So, if the Party demand a Poll, he ought not to refuse it. *Ibid.*

And now, by the *St. 7 & 8 W. 3. 25.* If the Election be not determined upon View, with Consent of the Freeholders, but a Poll is demanded, the Sheriff with others deputed by him shall forthwith proceed to take the Poll, in some open Place by the Sheriff appointed.

And the Sheriff, or his Deputies, shall appoint such a Number of Clerks as he thinks meet, for taking of it, who shall take the same in the Presence of the Sheriff, &c. and shall be first sworn by the Sheriff, &c. to take the same truly and indifferently, and to set down the Name of each Freeholder, and the Place of his Freehold, and for whom he polls, and to poll none, unless sworn, if any of the Candidates require it.

And the Sheriff, &c. shall appoint such one Person as each Candidate shall name, to inspect the Clerk appointed for taking the Poll.

And the Sheriff, &c. shall proceed to poll all the Freeholders, and not adjourn the Court without Consent of the Candidates to any other Place, nor, by unnecessary Adjournments in the same Place, protract or delay the Election, but proceed in taking the Poll from Day to Day, and Time to Time, without other Adjournment, unless by Consent of the Candidates, till all the Freeholders present be polled, and no longer.

And

And the Sheriff, Mayor, &c. shall deliver to any who desires it a Copy of the Poll, paying only for the Charge of writing it; and shall forfeit 500*l.* to the Party grieved for every wilful Offence against this Act.

[By 10 *Ann. c. 23.* The Sheriff must deliver the Check-books, as well as the original Poll-book to the Clerk of the Peace. *Rex v. Davis, T. 9 G. 2. Str. 1048.*]

[By *Stat. 18 G. 2. c. 18. §. 7, 8, 9.* Booths for taking the Poll not exceeding 15, to be erected at Candidates Expence, with the Names of the Hundreds on them. Clerks to be appointed. A List of the Towns for which each Booth is appointed shall be made, and, on Request, delivered to each Candidate; and no Person to vote there, but whose Estate lies in one of these Towns, unless they do not lie in any Place mentioned in any of the Lists. And a Check-book to be allowed for each Candidate.]

[By *§. 10 & 11.* The Sheriff shall not adjourn the next County-Court after receiving the Writ for more than sixteen Days, and it may be adjourned to a *Monday, Friday, or Saturday*, notwithstanding *Stat. 6 G. 2. c. 23.*]

By the *St. 23 H. 6. 15.* The Sheriff, after Delivery of the Writ, shall deliver, without Fraud, a sufficient Precept under his Seal to the Mayor or Bailiffs of Cities and Boroughs within his County, reciting such Writ, and commanding them, if a City, to choose Citizens, if a Borough, Burgesses for the Parliament. (D. 12.)
In a City or Borough. *Vide Ante, (D. 10.)*

And a Sheriff doing contrary to this, or other Statutes about Elections, shall forfeit the Penalty of the *St. 8 H. 6. 7. viz. 100 l.* to the King, and a Year's Imprisonment without Bail; and shall forfeit 100*l.* to every Knight, Citizen, or Burgess chosen in his County, and not duly returned.

By the *St. 7 & 8 W. 3. 25.* The Officer forthwith, on Receipt of the Writ, shall make out the Precept to each Borough, &c. and in three Days after Receipt, by himself or proper Agent, deliver it to the proper Officer, &c. to whom the Execution of it belongs, and no other.

[The Precept for a Borough must be directed to the Returning Officer: If other Words are added they are Surplusage, they may be struck out; and Parol Evidence shall not be received to shew they had been there, and so to make Variance from the Declaration and the Record erroneous. *Dickson v. Fisher, M. 9 G. 3. 4 B. M. 2267.*]

And by the *same Statute*, Such Officer shall indorse on the Precept the Day of his Receipt in the Presence of him who delivers it, and forthwith give publick Notice of the Time and Place of Election, and proceed to Election thereupon within eight Days after Receipt of the Precept, giving four Days Notice of the Day of Election.

[The Indorsement of the returning Officer of the Time of his receiving the Precept is immaterial, and need not be proved on an Action for Bribery against a third Person. *Gray v. Smithyes, H. 9 G. 3. 4 B. M. 2273.*]

A Citizen is the most worthy, but his Election agrees in all Respects with the Election of a Burgess. *Per Holt, Mod. Ca. 51.*

The Election in a Borough is by Persons, who hold by Burgage Tenure, or by the Burgesses of a Corporation. *Ibid.*

The Right of a Vote for electing Burgesses to Parliament is incident to every Burgage Tenure. *Ibid.*

The Election by the Burgesses of a Corporation is a personal Privilege given by Prescription, or Charter, and is a Right, vested in the whole Corporation, to be exercised by every Member of the same Corporation. *Per Holt, Mod. Ca. 52.*

By the *St. 1 W. & M. 2 Seff. 2.* and the *St. 2 W. & M. 7.* it is declared, That Elections to Parliament ought to be free.

By the *St. 7 H. 4. 15.* After the Election, the Names of the Persons chosen (whether present or absent) shall be written in an Indenture under the Seals of the Choosers, and tacked to the Writ; which Indenture, so sealed and tacked, shall (D. 13.)
The Return of the Elect-
ed.

shall be holden for the Sheriff's Return to the said Writ for the Knights of the Shires. And this Clause shall be added to the Writ, *Et Electionem tuam in pleno Comitatu tuo factam distinte & aperte sub Sigillo tuo & Sigillis eorum qui Electioni illi interfuerunt nobis in Cancellaria ad Diem & Locum in Breui contentum certifies indilate.*

By the *St. 23 H. 6. 15.* The Mayor or Bailiffs, &c. shall return to the Sheriff the Precept they received by Indenture between the Sheriff and them of the Elections, and the Names of the Citizens and Burgeses by them chosen. And the Sheriff shall make rightful Return of his Writ, and of every Return to him made by any Mayor or Bailiffs.

And if the Sheriff do contrary to this, or any other Statute for Elections, &c. he shall incur the Pain inflicted by the *St. 8 H. 6. 7. viz. 100l.* to the King, and Imprisonment for one Year, without Bail or Mainprize, and forfeit 100l. to every Knight, Citizen, or Burgeses chosen in his County, and not duly returned.

By the *St. 5 R. 2. Seff. 2. c. 4.* If a Sheriff be negligent in making his Return, or leave out of his Return any City or Borough, bound or of old wont to come to Parliament, he shall be amerced, or otherwise punished as was accustomed in Times past.

If any Sheriff refuses the Return of the proper Officer, and accepts a Return by an improper Officer of the Corporation, it shall be amended by the Clerk of the Crown, by Order of the House to file the proper Return, and take the other off the File. 20 Dec. 1710.

If he makes a double Return, and one is waived and appears improper, it shall be amended by taking it off the File. 8 Dec. 1710.

Vide Post, (D. 14.)

(D. 14.)
At what Time
it shall be.

By the *St. 5 R. 2. 4.* If a Sheriff be negligent in making his Return, he shall be amerced or punished as was accustomed in Times past.

By the *St. 7 H. 4. 15.* and the Clause afterwards inserted, the Sheriff is commanded, *Quod Electionem, &c. ad Diem et Locum in Breui contentum nobis in Cancellaria certifies.*

And where a Sheriff did not make a Return in due Time he was taken into Custody by Order of the House, as for a Breach of Privilege. 23 Oct. 1702.

By the *St. 10 & 11 W. 3. 7.* If a Sheriff make not a Return on or before the Parliament is to meet, or in convenient Time, not exceeding fourteen Days after Election on a new Writ, he shall forfeit 500l. a Moiety to the King, a Moiety to the Informer.

(D. 15.)
False Return.

By the *St. 11 H. 4. 1.* Justices of Assize may inquire of Returns made to Writs of Parliament, and if found by Inquest, that the Return is contrary to the *St. 7 H. 4. 15.* the Sheriff shall incur 100l. to the King, and the Knight unduly returned, shall lose his Wages.

And the Sheriff also, by the *St. 8 H. 6. 7.* shall have a Year's Imprisonment without Bail.

But by the *St. 6 H. 6. 4.* The Sheriff or Knight, &c. may traverse such Inquest of Office, before the Justices of Assize.

By the *St. 23 H. 6. 15.* If any Sheriff make a Return contrary to that, or other Statute for Elections, &c. he shall incur the Penalty of the *St. 8 H. 6. 7. Ante, (D. 12.)* and also pay to every Person chosen and not duly returned 100l. to be recovered with Costs in Debt against the Sheriff, his Executors or Administrators, by the Party grieved, if he sue in three Months after the Beginning of the Parliament, or, in his Default, by any that will sue.

And if any Mayor or Bailiffs return to the Sheriff any not duly chosen, he shall forfeit 40l. to the King, and 40l. to every Person chosen and not returned to be recovered *ut supra.*

And if any returned be put out, and another put in his Place, he that is put in his Place, if he take upon himself to be Knight, Citizen or Burgeses, forfeits 100l. to the King, and 100l. to him put out to be recovered, &c.

By the *St. 7 & 8 W. 3. 7.* continued by the *St. 12 & 13 W. 3. 5.* and afterwards by the *St. 12 Ann. 1. Seff. c. 15.* made perpetual; A False Return is against Law, and Any, making or procuring it, may be sued by the Party grieved, who shall recover double Damages with Costs.

All Contracts, Securities, Bonds, &c. to procure a Return are void, and he who makes them forfeits 300*l.* a third to the King, a third to the Poor, and a third to the Informer: And a Return, contrary to the last Determination in the House of Commons of the Right of Election for the same Place, is a false Return.

By the *same Statute*, the Clerk of the Crown shall enter the Return in a Book, (which, or a Copy of it, shall be Evidence as much as a Record,) and the not entring it in six Days, or if he alter it, but by Order of the House of Commons, or give a Certificate of any not returned, or wilfully neglect his Duty, he shall forfeit 500*l.* and his Office, and be for ever incapable of it.

By the *same Statute*, any Officer who wilfully, maliciously and falsely returns more Persons than he ought, forfeits double Damages, with Costs of Suit, to the Party grieved, who may sue the Officer, or him who procures such Return, at his Election. *Vide infra.*

The House expects the Sheriff to make a Return according to Law, and will not give him Directions in Case of Difficulty; tho' the Mayor to whom the Precept was directed dies, and yet the Burgesses go to Election, and Part return one by one Indenture, and the other Part return another by another Indenture. 9 Jan. 1699.

If a Sheriff makes a false Return, Debt lies for the 100*l.* upon the *St. 23 H. 6. 15. R. Pl. Com. 118, 130. Ast. Ent. 72, 91.*

So an Action upon the Case lies for a false Return, after a Determination for him in Parliament. *Semb. Lut. 89. Sal. 502. Semb. cont. Sal. 505.*

Or, after the Determination there becomes impossible; as, if the Parliament be dissolved. *Semb. per Holt Sal. 503.*

So an Action lies upon the *St. 7 & 8 W. 3. 7.* for a false Return. *Lut. 185.*

If the Plaintiff makes his Case pursuant to the Statute. *Sal. 504.*

But an Action does not lie for a false Return, if it be not founded upon some Statute; for it is a Matter only cognizable in Parliament. *Semb. Sal. 505. Vide Action upon the Case, (B. 8.)*

And therefore, an Action upon the Case does not lie before the Determination in Parliament. *R. Lut. 89. Per Holt Sal. 503.*

Nor after a Determination, by him against whom the Determination there was. *R. Lut. 89. Sal. 503.*

Nor since the *St. 7 & 8 W. 3. 7.* where the Return was conformable to the last Determination of the House of Commons. *Semb. Lut. 189.*

[Double Damages may be recovered for any false Return, though there is no Resolution of the House of Commons relating to the Right of Election to that Place. *In Excheq. Chamb. Williams Wynne v. Middleton, H. 19 G. 2. 1 Wils. 125.*]

[Action at Common Law will lie for a false or for a double Return; for there is *damnum cum injuria* in both Cases. *D. per Willes C. J. Ibid.*]

[The Courts of *Westminster-Hall* are not bound by Resolutions of the House of Commons relating to Actions at Common Law for such Returns; and the Party may proceed there, notwithstanding the Order of the House. *D. per Willes C. J. Ibid.*]

So it does not lie by the Common Law for a double Return. *Cont. per 3 J. in B. R. but the Judgment was reversed in the Exchequer, and the Reversal affirmed in Parl. R. 2 Vent. 37. 2 Lev. 114. Pol. 470. R. 3 Lev. 29. Per Holt Sal. 503.*

By the *St. 7 & 8 W. 3. 25.* No Sheriff, or Under-sheriff in a County, or City, or Mayor, or other Officer in a Borough, &c. shall give or take any Fee, or Gratuity, for making out Receipt, Delivery, Return or Execution of any Writ, or Precept for Elections.

(D. 16.)
The Wages.

A Knight for a Shire had 4*s.* *per Diem* for his Expences *veniendo ad Parliamentum, ibidem morando, & exinde redeundo.* 4 *Inst.* 46.

A Citizen and Burgeſſs 2*s.* *per Diem.* *Ibid.*

If nothing is done, but by the Death of the King the Parliament is dissolved, *Qu.* Whether Wages are due? *Ibid.*

And by the *St.* 23 *H.* 6. 10. At the next County Court after the Delivery of the Writ, the Sheriff shall make Proclamation, that the Coroners, every Chief Constable, and the Bailiffs of every Hundred, shall be at the next County Court to assess the Wages of the Knights, and all else that will come may, but the Sheriff, Coroners and Bailiffs not coming, forfeit 40*s.* each; and then the Sheriff or Under-sheriff, in full County, shall assess a certain Sum on every Hundred assessable, so as the Sum on all the Hundreds exceed not the Sum due to such Knights, and shall assess a certain Sum on every Village assessable in each Hundred, so as the Sum on all the Villis in each Hundred exceed not the Sum on such Hundred. And if the Sheriff levy more on any Place than assessed, or assess otherwise, he shall forfeit 20*l.* to the King, and 10*l.* to him that will sue by *Scire facias* against the Sheriff on this Statute, to be paid, if on such *Scire facias* he make Default, or be convicted, with treble Damages.

By the *St.* 12 *R.* 2. 12. Lords, or Spiritual Persons, purchasing Lands contributory to the Wages of Knights, they shall continue contributory, as they were wont.

By the *St.* 23 *H.* 6. 10. The Expences of Knights shall not be levied of any Villages, whereof it was not levied heretofore.

Tenants in *Antient Demefne* were not contributory to those Expences. *Cot. Ab.* 1.

Nor Clerks of *Chancery*, having Benefices. *Ibid.*

Nor Tenants of the Bishop of *London.* *Ibid.*

(D. 17.)
Privilege.
Vide Privilegi.

A Member of Parliament shall have Privilege for himself, his Servants and Goods. 4 *Inst.* 24. *D'Ew.* 43, 66. *Dy.* 60. *a. in Marg.*

And therefore, he shall not be arrested or sued. *D'Ew.* 43.

So his Attendants shall not be arrested. *D'Ew.* 83, 84, 85, 629.

Nor shall he be served with a *Subpœna*, Citation or, other Process, tho' he be not restrained. 4 *Inst.* 24. *D'Ew.* 655. *H. Parl.* 29.

A *Superſedeas* goes for every Action in particular, and not for all Actions generally. *Lat.* 150. *Dy.* 60. *a. in Marg.* *Seld.* 3 *Vol.* 2. p. 1524.

And a *Superſedeas* goes to Justices of Assize, *Quod superſedeant Captioni Affisfarum, &c. ubi Comites, et alii ſummoniti ad Parliamentum ſunt Partes quamdiu Parliamentum duraverit.* 4 *Inst.* 24.

He shall not be assaulted; for the Assailant was taken into Custody. 21 *Dec.* 1699.

Nor his Servant. *D'Ew.* 656, 658.

By the *St.* 5 *H.* 4. 6. and 11 *H.* 6. 11. If any Assault, or Affray be made to a Lord, Knight, Citizen, or Burgeſſs come to Parliament, or other Council of the King, by his Command, Proclamation shall be made three Days that he yield himself in *B. R.* within a Quarter of a Year after, or the first Day of the Term after such Quarter, and if not, that he be attaint, and pay double Damages to the Party, to be assessed by Enquest, or by the Justices of *B. R.* and pay a Fine and Ransom; and if he do, and be found guilty by Enquest, the same Penalty.

The Privilege of Freedom from Arrest for their Persons, Goods and Attendants, is demanded by the Speaker, when he is confirmed by the King. 21 *Jac.* *Rush.* 119.

And if a Member be arrested, he may have a Writ of Privilege for his Discharge. *Dy.* 60. *a.*

But a Letter from the Speaker, for Allowance of Privilege, is not to be regarded. *R. Lat.* 48, 150. *Dy.* 60. *in Marg.*

It is no Breach of Privilege to file an Original against him. *Sal.* 512.

[A Member of Parliament may be sued in *C. B.* by Bill. *Dawkins v. Burridge,* *M.* 13 *G.* *Str.* 734. *Ld. Raym.* 1442.]

If

If a Servant of a Member be arrested, he need not have a Writ of Privilege, but shall be discharged by the Serjeant. *D'Ew.* 249, 250.

But if a Servant procure himself to be arrested, he shall be punished for the Contempt. *D'Ew.* 254, 258.

And if he procure himself to be a Servant to avoid his Debts, he shall have no Privilege. *D'Ew.* 373.

So, if he be not a menial Servant he shall have no Privilege. *D'Ew.* 655, 315.

[An Attorney, though a menial Servant of a Peer, has no Privilege of Parliament. *Wickham v. Hobart*, M. 10 G. 2. *Str.* 1065.

[Whether a Gamekeeper is intitled to Privilege? *Q.* But if he is, it is necessary to have Affidavit what and where the Manor is, that the Lord is in Possession, and that the Defendant is Gamekeeper. *Chester v. Upsdale*, T. 24. G. 2. *Wilf.* 278.]

[Order of Lords, 28th June 1715, does not extend to all their Servants, only such as are necessarily and properly employed about their Estates or their Persons. *Ibid.*]

[So C. B. declared that Privilege extended to *infamous and seditious Libels tending to inflame the Minds and alienate the Affections of the People from his Majesty, and to excite them to traitorous Insurrections against the Government.* *Rex v. Wilkes*, P. 3 G. 3. 2 *Wilf.* 151.]

[But by Resolution of House of Lords, 29th November 1763, and of House of Commons, 24th November 1763, Writing and Publishing seditious Libels is not intitled to Privilege.]

And a Servant may be sued, if he be not arrested. *Semb.* 1 *Mod.* 146.

Privilege shall be allowed in all Cases, except Treason, Felony, or the Peace. *4 Inst.* 25. *Cott. Abr. Pref.* 8. b.

So a Peer shall have Privilege, if cited in the Ecclesiastical Court. *Seld.* 3 *Vol.* 2 P. 1478.

So a Peer shall have Privilege, tho' he be not committed in Time of Parliament, except for Treason, Felony, or refusing Surety of the Peace. *R.* 2 *Car. Rush.* 365. *H. Parl.* 30.

Nor shall he be taken by Attachment out of Chancery. *D'Ew.* 203.

[A Scotch Peer (not one of sixteen) arrested, shall be discharged on Motion. It does not appear whether the Suit was also discharged. *Ld. Mordington's Case.* *Fort.* 165.]

So Privilege shall be allowed in an Action by the King. *H. Parl.* 16.—Or an Information. *H. Parl.* 30.

The Privilege of a Peer commences from the *Teste* of the Summons, and continues for twenty Days after the Session, and so for twenty Days before and twenty Days after every Session, upon Prorogation. *R. by the Lords* 28 May 1624 and 27 Jan. 1628. 2 *Lev.* 72. 1 *Keb.* 329.

But the Commons claim forty Days before and after every Session. 2 *Lev.* 72.

[On the Dissolution of Parliament, the Members have Privilege *redeundo* for a reasonable Time. *Pitt's Case*, T. 7 & 8 G. 2. *Fort.* 159. *Str.* 985. *B. R.* H. 28.]

[If a Member is arrested within that reasonable Time, it is Breach of Privilege. *Ibid.*

[A Member so arrested may be discharged without a Writ of Privilege, on Motion. *Ibid.* and *Fort.* 342.]

[But it is on filing Common Bail; for it is a Discharge to his Person, not to the Suit. *Ibid.*]

But no Member shall have Privilege, when he is only a Trustee. *R.* 13 Feb. 1700. 16 Nov. 1699. *R.* 24 Oct. 1702.

Nor shall he have Privilege unless for his Person, when the House does not actually sit for Dispatch of Business. *Declared as a standing Order Nem Con.* 13 Feb. 1700.

Nor shall he have Privilege when he is a public Officer, for a Thing done in the Execution of his Office. *R.* 28 Nov. 1699.

Nor shall he have Privilege, if taken in Execution. *Vide Post*, (D. 20.)

Nor, if taken after his Election, and before the Session begins.

Or,

Or, if taken before his Election, he shall not have it afterwards. *R. in Parl.* 12 Mar. 1592. *Mo.* 340.

And by the *St.* 12 & 13 *W.* 3. 3. All Persons may sue, or proceed in any Suit in the Courts at *Westminster*, Admiralty, Court of Arches, Prerogative Court of *Canterbury* and *York*, and Delegates, in Causes Matrimonial and Testamentary, and all Courts of Appeal, against any Peer, or Member, or their Servants, immediately from the Dissolution, Prorogation, or Adjournment for more than fourteen Days till the Time of meeting or reassembling, so as they arrest not the Person privileged, but proceed by Summons, and Distress infinite, or by Original Bill, Summons, and Distress infinite, till Common Bail filed, &c.

So, by the *St.* 11 *Geo.* 2. 24. in any Court of Record, *Wales*, or County Palatine.

And by the *St.* 12 & 13 *W.* 3. 3. None, stayed by Privilege, shall be barred by the Statute of Limitation.

And by the *same Statute*, No Original Debtor or Accountant to the King shall have Privilege, but from Arrest.

Nor shall a Member have his Privilege, when he has once waived it. 20 Nov. 1702.

[Waver of Privilege must be in Writing. *Holliday v. Pitt*, *T.* 7 *G.* 2. *B. R. H.* 37.]

[It is never as to the Person, only to give a Power of suing. *Ibid.*]

Or, if he begins at Law, he shall not have Privilege, upon a Bill in Equity to be aided against such Suit. 1 *Ver.* 329.

[If a Peer, Plaintiff, gives Rule to examine Witnesses, it is not Breach of Privilege in Defendant to examine. *Earl of Derby v. Duke of Athol*, *T.* 1751. 2 *Vezey* 298.]

[If Peer brings Action at Law, it is not Breach of Privilege in Defendant to bring Bill for Injunction. *Ibid.*]

The Privileges, Liberties, and Jurisdiction of Parliament are the Right and Inheritance of the Subject. *By the Commons* 19 *Jac.* *Rush.* 53.

But none shall be imprisoned by the Serjeant for Breach of Privilege, till the Matter be examined by a Committee, and reported to the House. *R.* 13 *Feb.* 1700.

The Lords have Privilege from Arrest, &c. as well as the Commons. *Seld.* 3 *Vol.* 2 *P.* 1478.

[No Peer has Privilege of Peerage or of Parliament against being compelled by Process of Courts of *Westminster-Hall* to pay Obedience to *Habeas Corpus* directed to him. *Order*, 7th *February* 1757. 8th *June* 1757.]

They shall not answer to a Complaint against them in the House of Commons. *Seld.* 3 *Vol.* 2 *P.* 1478.

[*Stat.* 4 *G.* 3. c. 24. regulates franking Letters; and this is amended by *Stat.* 2 *G.* 3. c. 25.

[By *Stat.* 4 *G.* 3. c. 33. The Creditor of a Member, a Merchant, may on Affidavit sue out Writ and serve him, and if he does not make Satisfaction in two Months, he shall be Bankrupt from the Time of Service.]

[Merchant committing Act of Bankruptcy, Creditors may sue out Commission, and Commissioners proceed, notwithstanding Privilege.]

[But the Person shall not be arrested or imprisoned except for Cases made Felony by the Bankrupt Acts.]

[By *Stat.* 10 *G.* 3. c. 50. Peers and Members may be sued at any Time, and the Suit shall not be impeached or stayed by Privilege; but the Person not to be imprisoned.]

[The Court may order the Issues from Time to Time to be sold, and Plaintiff's Costs to be paid, and the Residue retained till the Purpose of the Writ answered, and then the Issues or Money returned.]

[Rule of Court of *B. R. C. B.* or Exchequer, may be enforced by Distress infinite.]

[If Member is illegally taken, and detained by Process of *B. R.* and is brought by *Habeas Corpus* to be charged in Execution in *C. B.* they will remand him, that he may be discharged by *B. R.* *Barnes* 199.]

(D. 18.)

(D. 18.) Assistants in Parliament.

All the Judges of the Realm, and Barons of the *Exchequer* of the Coif shall be attendant and assistant in *Domo superiori Parliamenti*. 4 *Inst.* 4, 50.

So, the Masters of *Chancery*. 4 *Inst.* 4.

So, the Attorney and Solicitor General.

And the King's Counsel. 4 *Inst.* 4.

But the Presence of the Judges, &c. is only for their Advice, not for their Consent. *Seld.* 3 *Vol.* 2 *P.* 1650. 4 *Inst.* 4.

(D. 19.) Proxies.

A Commoner cannot have any Proxy. 4 *Inst.* 12. For he himself is elected. *Ha. Parl.* 11.

But a Lord in Parliament may have his Proxy. 4 *Inst.* 12.

And such Proxy shall be a Lord of Parliament. *Ibid.* And this is the constant Course since 1 *H.* 8. *Seld.* 3 *Vol.* 2 *P.* 1477.

Yet, antiently, a Bishop made a Proctor of the Clergy his Proxy. 4 *Inst.* 12. And others not Barons. *Seld.* 3 *Vol.* 2 *P.* 1477.

And the usual Course is, for a Temporal Lord to make a Temporal Lord his Proxy, and for a Lord Spiritual, to make a Spiritual Lord. *Ibid.*

A Lord may name two or three for his Proxies; as, 1 *El.* 4 *Inst.* 12. *Vide infra* the Order 2 *Car.*

So, two or three *conjunctim & divisim*. 4 *Inst.* 12. *Seld.* 3 *Vol.* 2 *P.* 1477.

And in such Case, all present ought to assent or dissent; for if one be content and the two others not content, it is no Vote. *R.* 4 *Inst.* 13. *Ha. Parl.* 11.

But he shall not have above two Proxies. *By Order* 2 *Car.* *Rush.* 269.

The Proxy is appointed by the Lord upon Leave for his Absence.

And it has Usage for it *a tempore* *Ed.* 1. *Seld.* 3 *Vol.* 2 *P.* 1476.

But he may be summoned with a Clause, that he do not make a Proxy. *Seld.* 3 *Vol.* 2 *P.* 1476.

If a Lord appears in Parliament, tho' he speaks or argues nothing, his Proxy is thereby revoked. *R.* 1 *El.* 4 *Inst.* 13. *Ha. Parl.* 11.

(D. 20.) Absents.

By the *St.* 5 *R.* 2. 4. If any summoned to Parliament, *viz.* Lord, Knight, Citizen or Burgefs absent himself without Cause, he shall be amerced and otherwise punished as hath been antiently used. That is to say, a Lord by the Peers, a Knight, Citizen, or Burgefs by the Commons. 4 *Inst.* 43.

By the *St.* 6 *H.* 8. 16. None shall depart from the House of Commons, without Licence of the Speaker and Commons, entred in the Book of the Clerk before the End of the Parliament, on Pain to lose his Wages.

And he who departs, may be fined by the Commons. 4 *Inst.* 44. *D'Ew.* 309.

So a Lord may be fined by the Lords. 4 *Inst.* 44.

So an Information lies for a Contempt. *Semb.* *H. Parl.* 17, 18.

But a Burgefs, being ill, cannot be discharged for it. *Cont. Bro. Parl.* 7. 4 *Inst.* 8 *acc.* *R.* *acc.* *D'Ew.* 244, 281, 307.

Nor, a Member detained in Execution. *D'Ew.* 244. 2 *Ed.* 4. 8. *a.* *Per Dy. Mo.* 57. And if he be, by the *St.* 1 *Jac.* 13. he may be taken in Execution again.

Or, absent upon an Embassy. *D'Ew.* 244.

Yet, if a Member, absent for Illness, request his Discharge, or his Distemper be incurable, he may be discharged, and another elected in his Stead. *D'Ew.* 307, 429.

(E. 1.) Parliament summoned, and the Beginning of it.

THE Writ of Summons to Parliament issues at least forty Days before the Beginning of a Parliament. 4 *Inst.* 4. *Vide Ante*, (C.—D. 8.)

The Parliament cannot begin without the Presence of the King, either in Person or by Representation. 4 *Inst.* 6.

The King is often present in Person.

Or, if the King be out of the Realm, there may be a special Commission to the *Capitalis Justiciarius* of the Realm, to hold and proceed in the Parliament. 4 *Inst.* 6. *Vide Roy*, (H. 1, 2.)

And if the *Custos* of the Realm be engaged, &c. there may be a Commission to hold it in the Name of the King, or himself. *Cot. Ab.* 19.

So, if the King be infirm, a Commission shall issue to certain Lords of Parliament to hold, &c. the Parliament. 4 *Inst.* 6. So it was 19 *Jac.*, *Rush.* 39. *Ha. Parl.* 3.

So, if a Parliament begins by the King in Person, it may, after Prorogation by the King, be summoned before Commissioners. 4 *Inst.* 7.

If the King pleases that the Parliament shall not begin at the Day of the Return of the Writ of Summons, a Writ Patent under the Great Seal teste'd before the Day of the Return, and directed *Prælati, Magnatibus, Præeribus hujus Regni, ac Militibus, Civibus, & Burgensibus, &c.* shall be read at the Day of the Return in the Upper House before the Lords, and other Commons there assembled, whereby the Parliament shall be prorogued to another Day. 4 *Inst.* 7. So it was 1 & 5 *El.* *Vide Post*, (M.)

And in such Case the Parliament does not begin, till the Day to which it is prorogued. 4 *Inst.* 7.

(E. 2.) In what Place assembled.

Antiently both Houses of Parliament sat together. 4 *Inst.* 2. 2 *Inst.* 267. But it appears cont. per *Prynne* in his *Pref.* *Cot. Ab.* 5.

As, in 4 *Ed.* 1. 2 *Inst.* 267.

Anno 50 *Ed.* 3. The House of Commons assembled in the Chapter-House of the Abbot of *Westminster*. *Cot. Abr. Pref.* 13. b. 4 *Inst.* 2.

The Place was antiently *St. Stephen's Chapel*.

Every Day before the House of Commons assembles, Prayers are said in the House by the Speaker's Chaplain.

So, upon solemn Days, as 30 *Jan.* 29 *May*, & *Nov.* &c. some Divine is desired to preach a Sermon before the House. 3 *Jan.* 1710.

But none shall be recommended to preach before the House, unless he be of the Dignity of a Dean, or of a Doctor in Divinity. *R.* 31 *Jan.* 1699.

(E. 3.) Things done at the Beginning of a Parliament.

(E. 3.)
In the House
of Lords.

At the first Day of the Parliament, the King sets forth the Causes of summoning the Parliament. 4 *Inst.* 7.

Or, the Chancellor or Keeper for him. *Ibid.*

Or another, tho' the Chancellor be present; as, the Chief Justice. 4 *Inst.* 8.

The King's Chamberlain, &c. 4 *Inst.* 8. and *Marg. ibm.*

When the Commons go to choose their Speaker, the Lords appoint four Justices, and two Masters in *Chancery*, to be Receivers of Petitions for *England, Ireland, Wales, and Scotland*, which shall be delivered within six Days ensuing. 4 *Inst.* 11.

And three Justices, and two Masters are appointed Receivers of Petitions for *Gascoign, Guen, Poitiers, Normandy, Anjou, &c.* which shall be delivered within six Days ensuing. 4 *Inst.* 11.

Then six of the Temporal, and two of the Spiritual Nobility are appointed Triers of the Petitions of *England, Ireland, Wales, and Scotland*; who, or four of whom, assisted by the King's Counsel, sit in the Treasury Chamber, and try whether the Petitions are reasonable to be proposed to the Lords. *Ibid.*

As

As many are appointed Triers of the Petition of *Gascoign, &c.* 4 *Inst.* 11.
And this Course still continues, tho' *Gascoign, &c.* are lost. *Ibid.*

By the *St.* 5 *El.* 1. Every Knight, Citizen, Burgeſs and Baron of the *Cinque* (E. 4.)
Ports, before he enters into the Parliament-Houſe, or has a Voice there, ſhall In the Houſe
take the Oath of Supremacy, (and by the *St.* 7 *Jac.* 6. the Oath of Allegiance) of Commons.
before the Lord Steward or his Deputy, or ſuffer the Penalties, as if he had ſat
without Election, Return or Authority.

By the *St.* 30 *Car.* 2. 1. *Seſſ.* 2. No Peer, or Member of the Houſe of Com-
mons, ſhall vote or fit during any Debate, after the Speaker is choſen, till he
takes the Oaths of Allegiance and Supremacy, and repeat and ſubſcribe the De-
claration againſt Tranſubſtantiation and Invocation of Saints, &c. betwixt nine
and four of the Clock, at the Table, in a full Houſe, in ſuch Order as the
Houſe is called over, on Pain to ſuffer as a Popiſh Recuſant Convict, &c. and
a Writ ſhall iſſue to elect a new Member, &c.

By the *St.* 1 *W. & M.* 8. Every Perſon, required by any Act to take the Oath
of Supremacy made 1 *El.* 1. or the Oath of Allegiance made 3 *Jac.* 4. which
are hereby abrogated, or either of them, ſhall inſtead thereof take and ſubſcribe
the Oaths of Allegiance and Supremacy here preſcribed.

By the *St.* 7 & 8 *W.* 3. 27. Every Member of the Houſe of Commons was
obliged to ſubſcribe the Aſſociation. But by the *St.* 1 *Ann.* 22. this Part of the
ſaid Act is declared to be void.

By the *St.* 13 & 14 *W.* 3. 6. No Peer, or Member of the Houſe of Commons,
ſhall vote or fit during any Debate, after the Speaker is choſen, till he take and
ſubſcribe the Oath of Abjuration, (and by the *St.* 1 *Ann.* 22. it ſhall be taken
as there altered,) at the Time, Place, and on the Pain *ut ſupra* by the *St.* 30
Car. 2. 2.

If there be not any Lord Steward, the Treasuſer, or Comptroller of the Houſe-
hold by Common Uſage is his Deputy to all Intents. *D'Ew.* 122.

If there be a Lord Steward, he may appoint others to be his Deputies to take
the Oaths. *D'Ew.* 40.

And other Lords may be appointed,

Or any of the Members, after they are ſworn, may be his Deputies, for giving
the Oaths to others. *D'Ew.* 40.

Antiently there was no conſtant Speaker. 4 *Inst.* 2.

But there was a Speaker 44 *H.* 3. *Semb.* *D'Ew.* 40.

And the firſt Prolocutor named upon Record was 51 *Ed.* 3, viz. Sir Thomas
Hungerford. *D'Ew.* 40. *Cot. Abr. Pref.* 13. b.

But in the Parliament Rolls *Temp.* R. 2. and from that Time, the Speaker is
frequently mentioned. *D'Ew.* 41.

None can be Speaker without Election of the Commons. 4 *Inst.* 8.

And their Election is free. *D'Ew.* 41.

But the King may recommend. 4 *Inst.* 8. *Cot. Abr. Pref.* 14. b.

Or, reſuſe him. *Ibid.*

Yet, antiently, there was no Command for the Election of a Speaker. *D'Ew.* 41.

The firſt Command for it was 2 *H.* 4. *D'Ew.* 41.

And it was afterwards omitted, 7 & 8 *H.* 4. *D'Ew.* 41.

But it is now uſual, and by long Uſage neceſſary at this Day. *D'Ew.* 41.

The Speaker elect diſables himſelf. 4 *Inst.* 8.

Then he is preſented to the King in the Houſe of Lords, and there excuſes
himſelf. 4 *Inst.* 8. *Ruſh.* 480. And from the 6th Year of *H.* 6. they have
uſually made an Excuse. *D'Ew.* 42.

But ſometimes he does not make any Excuse; as, Mr. *Harley* did not, 13 *W.*

3. And, antiently, it was not made except for Cauſe; as, 5 *R.* 2. was the firſt
Excuse, and not allowed: 1 *H.* 4. 6 *H.* 4. *H.* 5. 28 *H.* 6. 29 *H.* 6. it was
not made. *D'Ew.* 42.

And before Confirmation by the King, he was called Speaker, when the Com-
mons were ſummoned to attend the King. 16 *Nov.* 1699. So, 21 *Oct.* 1702.
But uſually he is not ſo called.

If

If the Speaker be approved by the King, he prays, 1. Freedom of Speech, and all their antient Privileges. 2. Pardon for Mistakes, and that he may resort to the Commons for a Declaration of their Intent. 3. Access to the King. 4 *Inst.* 8. 21 *Jac. Rush.* 119. *Ha. Parl.* 4.

Freedom from Arrest, of Speech, and Access to the King, and candid Construction of their Proceedings. 3 *Car. Rush.* 484. So, *per Mr. Harley* 1702.

The House of Commons cannot assemble without their Speaker. 4 *Inst.* 8.

And therefore, if he cannot attend for Sickness, he shall be discharged; as, *John Cheyne*, 1 *H.* 4. *Wm. Sturton*, 1 *H.* 5. *Sir John Tirrel*, 15 *H.* 6. 4 *Inst.* 8.

After the Speaker chosen, and the Oaths, according to the *St.* 30 *Car.* 2. and 13 *W.* 3. taken, a Bill is read, and from thence the Session begins. So, 23 *Oct.* 1702.

And after a Bill read, the House is summoned to attend the King in the House of Peers, to hear the King's Speech.

Sometimes the House is summoned to attend the King, before a Bill is read: So it was, 16 *Nov.* 1699; so it is usually done. So it was 1702, 1710.

And the King's Speech was reported to the House by the Speaker, before a Bill was read, 16 *Nov.* 1699. But the Speaker said, that he could not do it till the Oaths were taken, according to the Statutes, 21 *Oct.* 1702.

And it was not reported, till after a Bill read, and Committees appointed, and other Orders made, 23 *Oct.* 1702.

After a Bill read, and before Committees appointed, &c. 29 *Nov.* 1710.

After the King's Speech is reported, the House usually returns Thanks for it. So, 23 *Oct.* 1703. 29 *Nov.* 1710.

And appoints a Day for the Consideration of it. 16 *Nov.* 1699. So, 23 *Oct.* 1702.

Then a Day is appointed, in which the House will resolve itself into a Committee for the Consideration of it. 24 *Nov.* 1699.

And the House appoints a Committee, for an Address upon their Vote of Thanks.

Or, to be drawn upon their Vote, and the Debate in the House. 29 *Nov.* 1710.

When the Address is reported from the Committee, it may be agreed to, or amended by the House. 30 *Nov.* 1710.

After the House agrees, it shall be presented to the King by the whole House usually. 30 *Nov.* 1710.

And the Members of the Privy Council are appointed to inquire the Time, when the King pleases to be attended by the House. 30 *Nov.* 1710.

The Summons to attend the King is made by the Usher of the Black Rod.

Or, by his Deputy Usher. 16 *Nov.* 1699.

When the Speaker reports the King's Speech, he prays a Copy of it, and reads the Copy. 16 *Nov.* 1699. 29 *Nov.* 1710.

So the Speaker ought to be conformable to the Command, or Order of the House: And therefore, if he be required by the Majority to propose the Question, it will be a Breach of Privilege, if he disobeys, tho' it be by the King's Command. *R.* 16 *Car.* 3. *Rush.* 1137.

(E. 6)
Committees
appointed.

The Commons in Parliament are the general Inquisitors for the Realm. 4 *Inst.* 11.

And at the Beginning of the Sessions, it is their principal Care to appoint Committees for Grievances, &c. *Ibid.*

The general Committees appointed after the reading of the first Bill, are, a Committee for Religion, for Grievances, for Justice, for Trade, for Privileges and Elections. 13 *Feb.* 1700. 16 *Nov.* 1699. So, 23 *Oct.* 1702.

A Committee is General, *i. e.* of the whole House, *de quo Vide Post*, (E. 13.) or a Private Committee.

The Committee appoints one of them for Chairman. 4 *Inst.* 12. (E. 7.)
 The Chairman reports the Resolution of the Committee to the House. *Ibid.* Chairman.
 Or, another whom the Committee appoints for this Purpose. *Semb.* 4 *Inst.* 12.

In a Committee for a Private Bill, the Chairman shall not sit without a Week's publick Notice set up in the Lobby. *Declared for a standing Order, 15 Feb. 1700.* (E. 8.)
 Committee for a private Bill.

And upon the Report of a private Bill, he shall inform the House, whether the Allegations of the Bill are examined, and the Parties concerned have consented, to the Satisfaction of the Committee. *Declared for a standing Order, 15 Feb. 1700.* So, 24 *Nov.* 1699.

Before a private Bill be considered by a Committee of the Lords, a Copy of it shall be delivered to every one concerned in it. *Declared for a standing Order, 16 Nov. 1705.*

And if an Infant be concerned, a Copy shall be delivered to his Guardian, or next Relation of full Age, not concerned in Interest, nor in the passing of the Bill. *Declared for a standing Order, 16 Nov. 1705.*

By a standing Order of the Lords 20 *Apr.* 1698. A Committee shall take no Notice of the Consent of any Person to any private Bill, unless he appear before them, or there be an *Affidavit* of two Persons made, that he is not able to attend, and doth consent to the Bill.

If a Bill be for a Sale of Land in such a Place, and a Purchase in another, the Committee shall see, that the Values are fully proved, and that there be an Agreement for the Purchase, and that the Bill provides for the effectual Purchase and Settlement of the Lands, as it is desired. *Order 16 & 19 Feb. 1705.*

And if Trustees are appointed by the Bill, they ought to appear personally before the Committee, and accept the Trust under their Hands. *Declared for a standing Order, 16 & 19 Feb. 1705.*

The Lord, who makes the Report of the Committee, shall report that all Orders were observed by the Committee. *Order 16. Feb. 1705.*

So a Committee is frequently appointed for other Purposes; as for Inspection of the Journals of another Session. 27 *Nov.* 1699. (E. 9.)
 Committee for other Purposes.

For Inspection of the Journals of the Peers.

But it was not usual till latter Times to appoint Committees to determine any particular Thing, without a Report to the House. *Cot. Ab. Pref.* 14. b.

After a Committee is appointed, the House may give any particular Instruction to it. So, 27 *Nov.* 1699. (E. 10.)
 Instruction to a Committee.

So a Matter referred to one Committee may be afterwards transferred to another. 11 *Jan.* 1699.

If a Witness refuse to attend the House, or a Committee, he shall be summoned by Order of the Speaker, or Chairman, to attend.

But no Witness pays any thing for being summoned to the House, or a Committee. *Declared 29 Jan. 1699.* (E. 11.)
 Witness attending the House, or a Committee.

Nor shall he be arrested upon his coming to, or Departure from the Committee; and if he be, the House upon Motion will discharge him. 'R. 15 *Feb.* 1699. (E. 15.)

An Officer may be summoned to attend with the publick Books of a Corporation, &c.

If any one directly or indirectly attempts to prevent a Witness from appearing, or giving Testimony, or tampers with a Witness, in respect of the Evidence to be given to the House, or to a Committee; this is a Misdemeanor, and the House will proceed against him with Severity. R. 24 *Oct.* 1702. 29 *Nov.* 1710.

So, if a Witness gives false Testimony to the House, or a Committee. R. 24 *Oct.* 1702. 29 *Nov.* 1710.

A Committee cannot continue sitting after the House is assembled.

And if Committees are adjourned, a Committee cannot sit till Committees be again revived. *Declared for a standing Order, 23 Jan. 1699.* (E. 12.)
 When Committees are to sit.

(E. 13.) The House will not proceed upon a Petition, Motion, or Bill for granting Money to the King, charging the Subject, or compounding or releasing a Debt due to the King, except in a Committee of the whole House. *Declared for a standing Order, 29 Nov. 1710. Vide Post, (H. 17.)*

(S. 14.) A Committee for Justice may summon any Judges, and examine them in Person, upon Complaint of any Misdemeanor in their Office. *1 Sid. 338.*

(E. 15.) The Committee of Privileges and Elections usually meets in the Speaker's Chamber, and then adjourns into the House.

There ought to be to the Number of five, who are named of the Committee, before Adjournment.

And there ought to be at least eight of them continuing in the House, otherwise the Committee does not proceed.

But it is usually ordered, that all the Members present have Votes. *So, Journal 13 Feb. 1700. So, 23 Oct. 1702. But, antiently, it was otherwise.*

A Petition which concerns an undue Election, or Return, &c. is usually referred to the Committee of Privileges and Elections.

And the Committee usually appoints the Day for Hearing.

Or the House may direct the Hearing upon a particular Day. *14 Dec. 1710.*

But it may be heard at the Bar of the House. *1 Dec. 1710.*

And, antiently, it was referred to the Determination of the King and the Lords. *Semb. Cot. Ab. Pref. 14. b.*

So if, upon a double Return ordered to be shewn to the House, it appears that there were equal Votes for all the Candidates, it may be declared void, and a Writ ordered for a new Election, without a Reference to the Committee. *1 Dec. 1710.*

So, if one of the Parties returned waives his Return, it may be amended by the House. *2 Dec. 1710.*

This Committee considers all Matters concerning the Return, Election, and Privileges of the Members. *Journal 13 Feb. 1700. 16 Nov. 1699. 23 Oct. 1702.*

Double Returns are usually determined in the first Place; for the House is not full before the Determination of them. *Journal 15 Feb. 1700. 16 Nov. 1699. 23 Oct. 1702.*

It is usually ordered, that all Returns be questioned within fourteen Days. *Journal 13 Feb. 1700. 16 Nov. 1699.*

So, within fourteen Days after another Return made. *Journal 13 Feb. 1700. 23 Oct. 1702.*

That any Person, returned for two Places, shall elect for which he will serve within three Weeks, if there be not any Question of the Return for such Place. *Journal 13 Feb. 1700. 23 Oct. 1702.*

That all Persons, returned upon a double Return, withdraw till their Return be determined. *Ibid.*

And every Member ought to withdraw when his Return, Election, or Privilege is debated. *Ibid.*

And only two Counsel of a Side shall be admitted. *Journal 13 Feb. 1700.*

As to a Petition concerning an Election, or Privilege. *Vide Post, (F. 3.)*

The Serjeant shall give Order to the Door-keepers and Messengers, to attend the Committee of Privileges and Elections, and provide that None crowd the Stairs below, or above in the Gallery. *Declared for a standing Order, 16 Dec. 1699.*

The Witnesses at the Committee shall be examined separately, and then withdraw; and the Passage shall be free for this Purpose. *Declared for a standing Order, 16 Dec. 1699.*

If the House judges a Petition concerning Election, frivolous or vexatious, it will order Satisfaction to the Party grieved. *R. Nem. Con. 13 Feb. 1700. R. 24 Oct. 1702.*

If it appears, that any Person procured himself to be elected or returned, by Bribery or Corruption, the House will proceed with Severity against him. *R. Nem. Con. 13 Feb. 1700. R. 24 Oct. 1702. Vide Post, (G. 5.)*

[By

[By *Stat. 10 G. 3. c. 16.* and *11 G. 3. c. 42.* After Day appointed to consider Petition, the first Time there are one hundred Members present, the Names of forty-nine present are to be drawn out of the Names of the whole House; each Party names one not drawn; each Party strikes out alternately one of the forty-nine, till they are reduced to thirteen; these fifteen make a Committee to determine the Election; thirteen must be present. None can vote who have not been present every Sitting. They have Power to send for Persons, Papers, &c. and to examine on Oath. Notice is to be given to all Parties. If there are more than two Parties interested, the thirteen balloted Members nominate the two Nominees. Made perpetual, by *Stat. 14 G. 3. c. 15.*]

(F) Petitions.

(F. 1.) By the Lords, or Commons, to the King.

PETITIONS in Parliament are some of Grace, some of Right. 4 *Inst.*
11.

Some by the Lords Temporal, some by the Lords Spiritual, some by the Commons, some by all of them. *Ibid.*

The Parliament shall not be ended, till all Petitions are answered. *Ibid.*

Petitions ought to be certain, to which a certain Answer may be given. *Ibid.*

The Commons ought to petition the King, and acquaint him with their Grievances. 18 *Jac. By the King to the Parliament. Rush. 22.*

A Petition against Recusants presented to the King by the Lords and Commons, 1 *Car.* and the King's Answer. *Rush. 181. The like, 4 Car. Rush. 516.*

(F. 2.) By other Subjects to the King.

So any Subjects may of Right make a Petition to the King for Redress of Grievances. *R. 27 Oct. 1680.*

And if any traduce the Right of such Petition, it is unlawful. *R. 27 Oct. 1680.*

But if Subjects framed Petitions to the King in a publick Cause, and collected a Multitude of Hands to it, it was a Misdemeanor and fineable. *R. 2 Cro. 37. R. Mo. 755.*

So, by the *St. 13 Car. 2. 5.* No Person shall solicit, or procure the Hands or Consent of any, above the Number of twenty, to any Petition, Remonstrance, or Address to the King, or both, or either House of Parliament, for the Alteration of Matters established by Law in Church or State, unless first consented to and ordered by three Justices of Peace, or the major Part of the Grand Jury, at the Assises or Quarter-Sessions, or, if in *London*, by the Mayor, Aldermen, and Common Council. And none shall present to the King, both or either House of Parliament, any Petition, Remonstrance or Address, accompanied with excessive Numbers of People, more than ten at once, on Pain of a Sum not exceeding 100*l.* and three Months Imprisonment without Bail for every Offence, to be prosecuted in *B. R.* the Assises, or Quarter-Sessions in six Months after, and proved by two Witnesses.

(F. 3.) Petition to the Commons.

So a Petition may be to the House of Commons: As, for a false Election, or Return of any to serve in Parliament.

But such Petition shall be, within fourteen Days after the Committee for Privileges and Elections is appointed, or within fourteen Days after a subsequent Return made. 16 *Nov. 1699.*

And

And if a Petition in another Session, for a Matter not heard upon the Petition in the former Session, varies from the first Petition, it shall be rejected: As, if the first Petition be against two, and the second against one Member only. 28 Nov. 1699.

And it may be referred to the Committee to examine, whether the second Petition be of the same Nature in Substance with the first. 29 Nov. 1699.

And if it be not the same in Substance, it will be ordered that the Committee do not proceed upon it.

If the Petition be not signed, it shall not be received.

So, if it be against no Person in certain, it shall be rejected. 30 Oct. 1702.

So every Petition ought to contain such Certainty and Particularity, that a direct Answer may be given. *Ha. Parl.* 9. (*Vide 4 Inst.* 11.)

(F. 4.)
The Proceed-
ing upon Pe-
titions.

When a Petition is presented to the House of Commons, sometimes upon Disclosure of the Substance of the Petition, it will be rejected. 18 Dec. 1699.

Sometimes it shall be referred to a Committee to examine the Matter of the Petition, and report it, with their Opinion, to the House. 8 Dec. 1699.

Sometimes the Matter of the Petition shall be examined at the Bar of the House. *R.* 24 Oct. 1702.

After a Petition received and read, the Petitioner, by Leave of the House, may withdraw it.

All Petitions ought to be discussed before the Conclusion of the Parliament. *H. Parl.* 9.

(G. 1.) The Law and Usage of Parliament.

THE Parliament, *suis propriis Legibus et Consuetudinibus subsistit.* 4 *Inst.* 15, 50.

All Matters moved, concerning the Peers or Commons in Parliament, ought to be determined according to the Usage and Customs of Parliament, and not by the Law of any Inferior Court. *H. Parl.* 14.

(G. 2.) In preventing Annoyances.

By the antient Usage of Parliament, Proclamation shall be made in *Westminster* at the Beginning, that None on Pain that he forfeit all that he has, shall wear a Privy Coat, or Armour, in *London, Westminster*, or the Suburbs. 4 *Inst.* 14.

So Proclamation shall be made, that no Games or Pastimes shall be used to the Disturbance of the Parliament. 4 *Inst.* 14. Order 12 Dec. 1699. *Ha. Parl.* 13.

So it was ordered that the Door of the Speaker's Chamber be locked at the Sitting of the House, and the Keys laid on the Table. 24 Nov. 1699. *R.* for a standing Order, 24 Oct. 1702.

That the Serjeant prevent Footmen and others standing on the Stairs in the Passage to the House, to prevent Annoyance by them. Declared for a standing Order, 18 Jan. 1699.

That Letters be not delivered by the Postman, till the Rising of the House. *R.* 24 Oct. 1702.

(G. 3.) In Inquiring of Misdemeanors.

The Commons are the general Inquisitors of the Realm. 4 *Inst.* 11, 24.

And therefore, if a Lord Spiritual or Temporal commit Oppression, Bribery, Extortion, &c. the Commons shall inquire of it; and if, by the Vote of the House, the Crime appears to have been committed, they transmit it with the Evidence to the Lords. 4 *Inst.* 24.

Common Fame is a sufficient Ground of a Proceeding in the House of Commons by Inquiry, or by a Complaint, if need be, to the King, or the Lords. (G. 4.)
R. 1 Car. by the Commons. Rusb. 217. What are good Grounds for an Inquiry.

(G. 5.) In Punishment of Offences.

One *Long* gave 4*l.* to be chosen, and was removed, 8 *El.* 4 *Inst.* 23.

The House will proceed with Severity against any chosen by Bribery, or Corruption. 29 Nov. 1710. *Vide Ante*, (E. 15.)—*Vide Officer*, (I.) (G. 5.) In the lower House.

Hill writing a Book to the Dishonour of the House of Commons, of which he was a Member, and for discovering the Conferencés of the House, after Examination, was expelled, and committed to the Tower for six Months, and fined 500 Marks, 23 *El.* 4 *Inst.* 23. Offences done by the Members. Bribery.

A Mayor taking 4*l.* for electing a Burgefs, was fined and imprisoned, 8 *El.* 4 *Inst.* 23. (G. 6.) Offences by others.

One committed to the Tower for striking one, returned upon Record as a Burgefs to Parliament: For he ought to take Notice of the Record at his Peril. *Ibid.*

So a Man, who misbehaved himself at Elections, was ordered to be prosecuted by the Attorney-General. 18 Nov. 1702.

So, where the Bishop of *Worcester* was censured for a Violation of the Privileges of the Commons, at the Election of a Knight for the County of *Worcester*, there was an Address to the Queen for his Removal from the Place of Lord Almoner. 18 Nov. 1702.

The Lords addressed *Contra*, but he was removed.

After the Impeachment of the Duke of *Buckingham*, the University of *Cambridge* chose him their Chancellor, by which they displeased the House of Commons. 2 *Car.* *Rusb.* 372.

How the Lords proceed upon an Impeachment, *Vide Post*, (L. 18, &c.)

[If *A.* gives *B.* an Elector five Guineas to vote for *C.* and *B.* gives *A.* his Note for it, and *A.* gives *B.* a Counter-note to deliver up his when the Condition is performed, it is a Gift to corrupt *B.* to give his Vote, within 2 *G.* 2. c. 24. ff. 7. though *B.* votes for *C.*'s Antagonist. *Sulston v. Norton*, *M.* 2 *G.* 3. 3 *B.* *M.* 1235.]

[Bribery at Elections to Parliament is a Crime at Common Law, and 2 *G.* 2. c. 24. does not take away the Common Law Method of Punishment by Information or Indictment; but *B. R.* ought not to interpose by Information within the two Years, as Defendant, even after Conviction, would be liable to be sued for 500 *l.* on that Statute. *Rex v. Pitt*, *Rex v. Mead*, *T.* 2 *G.* 3. 3 *B.* *M.* 1335.]

[Judgment on an Information before the two Years expired, was, that one Defendant be imprisoned for six, and the other for three Months; having both been already some Time in Prison. *Ibid.*

[Judgment in another Case, when the two Years were expired, was 200 *l.* fine, and three Months Imprisonment. *Rex v. Haydon*, *P.* 3 *G.* 3. 3 *B.* *M.* 1387.]

[The Court will sometimes adjourn the Matter till the Time for bringing the *qui tam* Action is expired, and accept the Defendant's own Recognizance to appear. *Rex v. Haydon*, *M.* 3 *G.* 3. 3 *B.* *M.* 1359.]

[But will not defer pronouncing Judgment, because Defendant has indicted one of the Witnesses against him. *Rex v. Haydon*, *P.* 3 *G.* 3. 3 *B.* *M.* 1387.]

[Defendant who has given Money to a Man for his Vote, by so doing admits his Right to vote, and shall not be permitted to say he had not. *Combe v. Pitt*, *M.* 5 *G.* 3. 3 *B.* *M.* 1586.]

[If Plaintiff has declared, that *A.* and *B.* had declared themselves Candidates, and that *whilst* they were Candidates Defendant bribed, it is not necessary to prove that *B.* had offered himself when the Bribe was given; it is enough if it is proved to be to vote for *A.* (who had declared) and his Friend. *Ibid.*]

Asking a Vote for a Man makes him a Candidate. *Ibid.*

[If the Declaration is, to vote for *A.* and *B.* it is good if it is proved to be for *A.* though it cannot be proved to be for *B.* *Combe v. Pitt*, *M.* 5 *G.* 3. 3 *B. M.* 1586.]

[An Offender against 2 *G.* 2. *c.* 24. discovering within twelve Months another so as to be convicted, not having at that Time been convicted himself, is indemnified; the Discovery need only be before his own Conviction, he need not be Prosecutor, being Witness is sufficient. Verdict alone is not Conviction but Judgment, which relates back to the Discovery. If Verdict against Discoverer is had before Trial of the Discovered, so that he cannot have the Benefit of his Discovery, Judgment cannot be arrested, *Audita Querela* is the Remedy, or that being expensive, the Court may give Relief summarily by Special Rule to stay Execution against him. *Sutton v. Bishop*, *H.* 9 *G.* 3. 4 *B. M.* 2283.]

[In Action on 2 *G.* 2. Defendant a Discoverer may plead *nil debet*, and give his Discovery in Evidence. *Sebley v. Cuming*, *M.* 10 *G.* 3. 4 *B. M.* 2464.]

[Being Prosecutor does not make a Man the Discoverer. *A.* sends for *B.* and others, and employs an Attorney to take their Affidavits for the Purpose of suing an Offender, *B.* makes Affidavit of Bribery, he is the Discoverer, tho' before that he had made no Discovery of it. *Ibid.*]

[No Damages for Detention of the Debt on this Statute. Costs are given; but if Damages and Costs are blended in the Judgment, it shall on Error by Defendant be reversed as to both, but affirmed as to the Debt. *Cuming v. Sibley*, *M.* 10 *G.* 3. 4 *B. M.* 2489.]

[Yet Plaintiff may be the Discoverer, but the Act does not make or consider him as such, nor is it to be presumed without Evidence. *Curgenven v. Cuming*, *M.* 10 *G.* 3. 4 *B. M.* 2504.]

[If there is Verdict against Defendant for Bribery, the Court will not stay Judgment on Motion on Affidavits that Defendant is a Discoverer; (especially if there are suspicious Circumstances) but leave him to some other Remedy, as *Audita Querela*. *Pugh v. Curgenven*, *M.* 10 *G.* 3. 3 *Wils.* 35.]

(*G.* 7.) Things done or said in Parliament, shall not be questioned elsewhere.

A Thing moved or done in Parliament shall not be discussed elsewhere. 4 *Inst.* 15.

And therefore, the Judges shall not give any Opinion of a Matter of Parliament. *Ibid.*

If any absents himself from Parliament, if a Suit or Information be for it in *B. R.* he shall plead to the Jurisdiction of the Court, that it ought to be determined in Parliament.—So, the Bishop of *Winchester*, 3 *Ed.* 3. 4 *Inst.* 15. and an Information against Thirty-nine for the same Cause, 3 & 4 *Pb.* & *M.* and Six submitted, but nothing done to the others. 4 *Inst.* 17.

By the *St.* 4 *H.* 8. 8. All Accusations of Members, for any Matter in Parliament, shall be void. *Ha. Parl.* 7.

No Member shall be molested for a Thing said or done in Parliament, except by the House. By the Commons, 19 *Jac.* *Rush.* 53. But the King razed it out of the Journal, *ibm.* 54. *R.* 5 *Car.* *Rush.* 663.

The King shall not give Credit to an Information of a Thing done or said in Parliament, till he be informed by the House itself. By the Commons, 19 *Jac.* *Rush.* 53. But the King razed it out of the Journal, *ibm.* 54.

An Address, that the King would shew his Indignation against those who misrepresent Proceedings in Parliament. *R.* 28 *Nov.* 1699.

So none ought to be censured by another Court for the Proceeding in Parliament. *Per Pym.* 3 *Rush.* 1132.

But for a Matter out of Parliament, a Member of Parliament may be punished elsewhere, after the End of the Session, if he be not questioned for it in Parliament. *R.* 5 *Car.* *Rush.* 663. *

If for a Thing not done in the Way of Parliament. *Ibid.* *

As, a Conspiracy to inveigh against the Judges or King's Counsel in Parliament, without an Intent to prosecute them in a legal Course, but with Intent only to defame them. *R. 5 Car. Rush. 663.*

(G. 8.) Liberty of Speech.

Freedom of Speech is the antient and undoubted Right and Inheritance of Parliament. *Claimed 19 Jac. Rush. 46. But disallowed by the King, ibm. 52. and then claimed by Protestation, ibm. 53. But the King razed it out of the Journal, ibm. 54.*

By the *St. 4 H. 8. 8.* All Suits, &c. against *R. Strode* and his Complices, or any other hereafter, for any Bill, speaking, or reasoning of any Thing concerning the Parliament, shall be void.

This Statute was a particular Law. *R. by all the Judges, 5 Car. Rush. 662. R. Cont. in Parliament. Gro. Car. 604.*

But all Members of Parliament ought to have Freedom of Speech upon Matters debated in Parliament, by the Course of Parliament. *R. by all the Judges. Rush. 662.*

And none shall be put to answer elsewhere for speaking in Parliament, tho' it be suggested to be with a bad Intent. *R. in Parliament 1667. Vide Gro. Car. 604.*

By the *St. 13 Car. 2. 1.* There was a Proviso, that nothing in the said Act should extend to deprive either House of Parliament, or the Members thereof, of their just and antient Privilege of debating any Matters propounded in either House, or at any Conference or Committee, or touching the Repeal or Alteration of any old, or preparing any new Law, or redressing any publick Grievance. But Members shall have the same Freedom of Speech and Privileges as before.

And by the *St. 1 W. & M. 2. Sess. 2.* it is declared, that the Freedom of Speech and Debates, or Proceedings in Parliament, ought not to be impeached or questioned, in any Court, or Place out of Parliament.

(G. 9.) Debates there shall not be divulged.

So Debates in the House of Commons ought not to be divulged without the Order of the House.

So the Lords ought not to take Notice of any Thing debated by the Commons till it be declared to them by the Commons. *R. 16 Car. 3 Rush. 1147.*

Nor the Commons, of a Thing debated by the Lords. *3 Rush. 1147.*

(G. 10.) *In Legum datione.*

Every Act of Parliament shall have the Assent of the Lords and Commons, and of the King. *4 Inst. 25. 2 Inst. 157.*

If there be the Consent of one, or two of them, it is only an Ordinance. *4 Inst. 25.*

So, if it be with the Consent of the King and the Lords Temporal only, (without the Spirituality) and the Commons. *Semb. 4 Inst. 25. Vide Ante, (D. 1.)—Post, (R. 3.)*

Or, with the Consent of the King, and the Lords Spiritual only, (without the Temporality,) and the Commons. *4 Inst. 25.*

And therefore, an Ordinance by the Lords, *6 Ed. 3.* That none shall refuse to serve the King as a Judge, or otherwise, in *Ireland*, does not bind the Subject. *2 Inst. 47, 8.*

So, the *46 Ed. 3.* That none of the Profession of the Law shall be chosen by the Commons to serve in Parliament. *4 Inst. 48.*

So a Bill by the King to attain any with the Assent of the Lords, without Mention of the Commons, is not a Law. *F. Parl. 3.*

(G. 10.)
The Manner
of enacting a
Statute.
There ought
to be the As-
sent of King,
Lords, and
Commons.

(G. 11.)
Bill intro-
duced.

A Bill may be introduced by any Member.

But it shall be after an Order of the House, upon a Motion for such a Bill, and it is ordered, that such Member prepare and bring in the Bill. 24 Nov. 1699.

And sometimes a Committee is ordered to prepare a Bill. 28 Nov. 1699.

But a private Bill shall not be brought in, without a Petition which suggests the Causes for it. *Ordered and declared for a standing Order*, 15 Feb. 1700. Ord. 24 Nov. 1699.

Nor, in the upper House. *Declared for a standing Order*, 7 Dec. 1699.

And such Petition to the Lords shall be signed by all concerned in the Consequences of the Bill. Ord. 16 Feb. 1705.

And it shall be referred to two Judges, who ought to summon before them all who may be concerned in the Bill, and make a Report under their Hands of the State of the Case, and their Opinion of it. *Declared for a standing Order*, 16 Feb. 1705.

(G. 12.)
Bill read.

A Bill shall be read three Times before it be passed.

A private Bill shall be printed.

So in the House of Lords it shall be printed, and delivered to the Clerk for the Lords. Ord. 16 Nov. 1705.

Three Days ought to intervene between every reading of a private Bill. *Declared for a standing Order*, 15 Feb. 1700. Ord. 24 Nov. 1699.

It shall not be read to the Lords upon a Day appointed for hearing of Causes, before the Cause heard. Ord. 14 and 18 Jan. 1705.

When a Bill is presented upon an Order of the House, it shall be received and read the first Time. 23 Oct. 1702.

Tho' it be a private Bill. 12 Dec. 1699.

Or the first reading may be appointed upon a subsequent Day. 19 Dec. 1699.

And if, upon Receipt of the Bill, no Time be appointed for reading it, it shall be afterwards read upon Motion, or, upon Motion, a Day shall be appointed for reading it. 20 Dec. 1699.

Or, the first reading may be appointed immediately after the Receipt. 24 Jan. 1699.

After the first reading, it shall be ordered that the Bill be read a second Time. 16 Nov. 1699.

And sometimes, that it be read a second Time at a certain Day. 29 Nov. 1699.

Tho' it be a private Bill. 30 Nov. 1699.

If a Day certain be not limited, for the second reading, there ought to be a Motion, upon which a Day shall be appointed. 11 Dec. 1699.

Or, upon Motion for the second reading, it shall be read immediately.

And sometimes the second reading is directed to be in a full House. 20 Jan. 1699.

Sometimes after Noon of such a Day. 25 Jan. 1699.

Sometimes upon such a Day, and that nothing intervene. 24 Jan. 1699.

(G. 13.)
Committed.

After the second reading, the Bill shall be committed to a Committee to be considered there. *Vide Ante*, (E. 6, 7, 8.)

Sometimes it is committed to a Committee of the whole House. *Vide Ante*, (E. 13.)

If there be no Objection to a Bill, upon the second reading, nor any Blank in it, it shall be ingrossed without a Commitment.—So it was, 6 Feb. 1699.

Sometimes it shall be committed upon the first reading. *D'Ew.* 17, 69.

So, Bills of Grace, as for a general Pardon, shall be passed upon the first reading, without more. *D'Ew.* 73, 464, 5.

Sometimes the Bill shall lie, without an Order to be committed, or ingrossed. *D'Ew.* 111.

Yet, regularly, upon the second reading, if it be not passed or rejected, it ought to be committed or ingrossed. *D'Ew.* 464.

And

And it ought to be committed or ingrossed upon the Day when read: though antiently it has been done upon another Day. *D'Ew. 27.*

After the reading of a Bill, it shall be delivered, with a Brief of it, to the Speaker, who reads the Title, and then reports the Substance of the Bill to the House. *(G. 14.)*
The Duty of the Speaker, upon the reading.

So, in the House of Peers. *D'Ew. 17.*

After the Bill is read, and the Effect of it reported to the House, it may be opposed by any Member. *(G. 15.)*
Bill opposed, or debated.

And a Bill may be opposed, debated, or rejected upon any of the readings.

Upon the first reading. *D'Ew. 17.*

Upon the third reading. *D'Ew. 271.*

But the usual Course is upon the second reading. *D'Ew. 17.*

After a Bill is passed the Committee, and reported to the House, it shall be ordered to be ingrossed. *(G. 16.)*
Bill ingrossed.

So, if no Objection be to the Bill, nor any Blank, it may be ingrossed upon the second reading, without Commitment. So it was done, 6 Feb. 1699.

But a Bill transmitted from one House to another, is not ordered to be ingrossed; because it was ingrossed and comes in Parchment from the other House. *D'Ew. 17, 20, 148.*

So Bills of Grace, as for Naturalization, Pardon, &c. are not ordered to be ingrossed; because they come to the House ingrossed in Parchment, and signed by the King. *D'Ew. 20.*

After the third reading of a Bill by the Clerk, and the Effect of it reported by the Speaker, if nothing be spoken to it, the Speaker proposes the Question, Whether it shall be passed? *(G. 17.)*
Bill passed the House. *D'Ew. 45.*

When a Bill is passed by the Commons, the Clerk, within the Bill at the Top upon the Right Hand, writes, *Soit baille aux Seigneurs.* *(G. 18.)*
Transmitted for the Assent of the other House. *D'Ew. 45. Fitz. Parl. 1.*

Then it shall be transmitted to the Lords by some of the Commons.

When a Bill is presented by the Commons, to the other House, the Chancellor and Lords rise, and at the Bar receive it from those who bring it from the Commons. *(G. 19.)*
From the Commons to the Lords. *D'Ew. 585.*

If a Bill be passed by the Lords, it shall be indorsed, *Soit baille aux Commons.* *(G. 19.)*
From the Lords to the Commons. *Dy. 93. a.*

Then it is transmitted to the Commons by two of the Assistants in the House of Peers.

These being admitted into the House of Commons, after three Congees at the Table, inform the House, that the Lords have passed such a Bill, and they read the Title. *D'Ew. 45.*

If the Messengers of the Lords see the Speaker, at his Entry into the House of Commons, they cannot deliver the Bill, but ought to deliver it in the House. *D'Ew. 688.*

And where a Speaker received it at the Door, and took it and delivered it to the House, it was returned to the Lords. *D'Ew. 688.*

Tho' a Bill be transmitted to the Lords, yet it remains a Bill of the Commons. *(G. 20.)*
Amendments to a Bill by the Lords. *D'Ew. 576.*

If the Lords make an Amendment by the Omission, Change, or Addition of any Words, it ought to be written in Paper with a Reference to the Line where it ought to be made. *D'Ew. 576. 20.*

And then the Lords subscribe the Bill with these Words, *A cesty Bill ovesque les Amendments a mesme le Bill annexe les Seigneurs sont assentus.* *D'Ew. 576.*

But the Amendments ought not to be written in Parchment. *D'Ew.* 576, 534.

When a Bill, with Amendments, is returned to the other House, there the Bill shall not be read another Time, but the Amendments only. *D'Ew.* 271.

If the Amendments are agreed to by the Commons, the Bill is amended by them. *D'Ew.* 576.

If one House does not approve the Amendments of the other, it cannot reject them; but ought to reject the whole Bill, or receive it with the Amendments. *D'Ew.* 513, 537.

But one House may make Additions to the Amendments of the other. *D'Ew.* 354.

If the Lords add a new Clause, or Proviso to a Bill, it shall be ingrossed in Parchment, and subscribed, *Soit baille aux Commons*, and then the Bill with the Clause annexed, shall be transmitted to the Commons, with this Subscription, *A cesty Bill ovesque le Schedule ou Provision a mesme Bill annexe les Seigneurs sont assentus.* *D'Ew.* 576. 26.

(G. 21.)
Royal Assent. The King usually gives his Assent to Acts passed by both Houses, in Person. But he may declare his Assent by Letters Patent, and appoint any one to notify such Assent, and the Clerk to indorse it, in the usual Form. *D'Ew.* 389. *Dy.* 93.

And by the *St.* 33 *H.* 8. 21. The King's Royal Assent by his Letters Patent under his Great Seal, and signed with his Hand, and notified in his Absence to the Lords and Commons, is and ever was of as good Strength, as tho' the King had been present, and assented publickly to the same, and shall hereafter be taken for effectual. *H. Parl.* 40.

When the King is ready to give the Royal Assent, the Clerk of the Crown reads the Title of a publick Bill, and if the King allows it, the Clerk of the Lords says, *Le Roy le veult.* *D'Ew.* 35, 116.

If it be a private Bill, the Clerk says, *Soit fait come il est desire.* *D'Ew.* 35. After the other publick and private Bills are approved, or disapproved, the Clerk of the Crown reads the Title of the Act of Subsidy, to which the Clerk of the Lords gives the King's Answer, viz. *Le Roy remercie ses loyal Subjects, accept leur Benevolence, et aussi le veult.* *D'Ew.* 35.

Then if there be an Act of Pardon, after the Title read by the Clerk of the Crown, the Clerk of the Lords pronounces, *Les Prelats, Seigneurs, et Commons, en ce present Parliament assemblees, au nom de tous vous autres Subjects, remercient tres humblement votre Majeste, et prient a Dieu vous donner en Santè bone vie et longue.* *D'Ew.* 35.

But Acts for a Subsidy or a Pardon sometimes have the Assent, before other publick or private Acts. *D'Ew.* 76. 116.

If the King disallows the Bill, the Clerk pronounces, *Le Roy s'avisera.* *D'Ew.* 35.

But if Letters Patent for his Assent are not signed by the King, but the Stamp of his Name put to them by another, it is not sufficient. *Semb. Dy.* 93. *
* [Vide Margin lhm.]

(D. 22.)
Inrollment of an Act. After the Royal Assent given, the Clerk of the Parliament transcribes every publick Act into a Roll, and subscribes, *Le Roy le veult.* *D'Ew.* 35.

So he transcribes every private Act, and at the Beginning says, *In Parlamento inchoat' et tent', &c. inter al' inactitat' ordinat' et stabilit' fuit sequens hoc Statutum ad verbum ut sequitur, viz.—* Then at the End adds, *Ego A. B. Clericus Parliamenti virtute brevis supradict' Dominae nostrae Reginae de certiorand' mibi direct' et hiis annex' Certifico superius hoc Scriptum verum esse tenor' Act' Parl' supradict' in eo brevi express'. In cujus Rei Testimonium, &c.* *D'Ew.* 36.

Publick Acts after Inrollment are delivered into Chancery, and this is the original Record. *R. Hob.* 109.

But private Acts are not inrolled, without the Suit of the Party; and therefore the original Bill, filed among the Bills of Parliament, and marked with the Great Seal, as the Course is, is the original Record of it. *Hob.* 109.

Before

Before the Invention of Printing, the Usage was, after the Conclusion of a Parliament, to transcribe all the Acts in Parchment, and by a Writ to every Sheriff of the Kingdom command, *Quod Statuta illa & omnes Articulos in eisdem contentos in singulis locis in balliva sua tam infra Libertates quam extra, ubi expedire viderit, publice proclamari et firmiter teneri faceret.* 4 Inst. 26. H. Parl. 36. 1 Cb. R. Arg. 51. (D. 23.) Promulgation

And this Writ was sometimes in Latin, sometimes in French. 4 Inst. 26.

The Sheriff thereupon proclaimed them in his County Court, where a Transcript was preserved, that every one might read it, or take a Copy of it. Ibid.

So, by *Certiorari*, the Tenor of the Record of every Act may be removed into the Chancery, and delivered by the Hand of the Chancellor into B. R. 4 Inst. 43.

And by *Mittimus* from B. R. it may be afterwards sent to C. B. or the Exchequer. Ibid.

And the King by Writ may command, that each Court the Act *firmiter observari faciat.* Ibid.

But Proclamation by the Sheriff is not necessary; for every one ought to take Notice of every Thing done in Parliament. 4 Inst. 26. H. Parl. 36.

And since Printing has been used, the Proclamation has been disused. 1 Cb. R. Arg. 53.

Upon any Message from the Lords, the Commons may desire a Conference with them upon the Subject Matter of the Message. 15 Feb. 1700. (G. 24.) Conference with the Lords.

The Commons send one of their Members to desire such Conference. 15 Feb. 1700.

If the Lords consent to the Conference, and appoint the Time and Place, the Member reports it to the House. 17 Feb. 1700.

After a Conference appointed and agreed, Managers shall be named for it. Ibid.

And Instructions may be given to the Managers. Ibid.

After a Question is proposed, a Motion may be made for the previous Question, viz. Whether the Question proposed shall be now put. 2 Nov. 1702. (G. 25.) The Manner of putting the Question.

After the previous Question proposed, the first Question may be amended. Agreed. Ibid.

But not after the previous Question put. Agreed. Ibid.

If the previous Question be moved and seconded, it shall be put first. Ibid.

And if it be carried in the Affirmative, the main Question shall be put. Ibid.

In the House of Peers, the Lords deliver their Votes *seriatim*, beginning from the youngest Baron. 4 Inst. 34. (G. 26.) The Manner of Voting; In the House of Peers.

And they say *Content*, or *Not content*. Ibid.

If the Vote be delivered conditionally, as if he says, *Content as far forth as it swerves not from the Law of God and the Church, and imports no deadly Sin*, the Condition shall be rejected. So it was, 6 H. 6. 4 Inst. 35.

At a Committee, upon a Division, the *Noes* go to one Part of the House, the *Yeas* to the other: For to the Question they say, *Yea*, or *No*. 4 Inst. 35. (G. 27.) In the House of Commons. At a Committee.

Tho' it be a Committee of the whole House. Ibid.

And then the Number appears. Ibid.

When the Commons sit as an House, upon a Division, if it cannot be determined by the Sound of the Voices which Party is the Majority, the *Noes* sit, and the *Yeas* go out of the House. 4 Inst. 35. (G. 28.) In the House.

Then two are appointed to number the Parties, one the *Yeas*, the other the *Noes*, and deliver the Numbers to the Speaker in the House. Ibid.

If a new Thing, or Aid, be demanded, the Commons may answer, that they cannot consent without Conference with their Countries. 4 Inst. 14. (G. 29.) Conference with the People.

So

So it was answered 9 Ed. 3. when a new Sort of Subsidy was demanded. 4
Inst. 34.

(H) The Subject Matter of Laws.

(H. 1.) The Parliament is absolute.

THE Parliament makes Statutes, &c. concerning Matters Ecclesiastical, Civil, Capital, Common, Criminal, Martial, Maritime, &c. Co. L. 110. a.

The Legislative Power of Parliament is so absolute, that it cannot be limited to Things, or Persons. 4 Inst. 36. H. Parl. 46.

Parliamentum omnia potest. Per Mont. Ch. 7.

The arduous and urgent Affairs concerning the King, the State and Defence of the Kingdom and Church, the Maintenance and Establishment of the Laws, and the Redress of Grievances, are proper Subjects for Counsel and Debate in Parliament. R. by the Commons, 19 Jac. Rusb. 53. But the King raised it out of the Journal. Ibid. 54.

The Writ of Summons says, that the Parliament is summoned *pro arduis et urgent' Negotiis, Nos, Statum et Defensionem Regni et Ecclesie concernent'*.

And therefore, not only Things delivered by the King, or his Chancellor, are Subjects of their Debate; but also all other Affairs. H. J. P. 5.

(H. 2.) May give the King a Legislative Authority.

By the St. 28 H. 8. 17. Power was given to the Successor of the King to repeal by his Letters Patent, after his Age of twenty-four Years, any Act which he had assented to before such Age. 2 Rol. 164. l. 42.

(H. 3.) Dissolution of a Marriage, &c.

So the Parliament may annul a Marriage. Pr. St. 8 & 9 W. 3. 27.

Dissolve a Marriage, and make the Children illegitimate. Pr. St. 9 & 10 W.

3. 11. H. J. P. 47. 4 Inst. 36.

Dissolve a former, and enable another Marriage. Pr. St. 11 & 12 W. 3. 2.

Make a Separation between Husband and Wife, for the Severity of the Husband. Pr. St. 12 & 13 W. 3. 16.

So it may make a Bastard to be legitimate. H. P. C. 47. 4 Inst. 36, 7.

Make the Issue inherit in the Life of his Ancestor. H. J. P. 47. 4 Inst. 36.

(H. 4.) Consultation about the King's Marriage.

So the King advised with his Parliament in Relation to his Marriage. Cot. Ab. 9, 10.

(H. 5.) Enabling a Sale, &c. and practicable by the Rules of Law.

So the Parliament may enable a Sale, or Settlement of Lands, not practicable by the Rules of the Law; as, it may enable an Infant to make a Sale for the Discharge of Debts, &c. Pr. St. 10 & 11 W. 3. 46.

To make a Jointure during his Minority. Pr. St. 9 & 10 W. 3. 8.

Or a Settlement of an Estate upon Marriage. Pr. St. 10 & 11 W. 3. 38.

Or Leases. Vide Pr. St. 10 & 11 W. 3. 48.

To execute a Power.

So it may enable a Lunatick to make a Sale, Lease, &c. Pr. St. 9 & 10 W.

3. 16.

To execute a Power.

So it may enable any, by Marriage Settlement or otherwise disabled, to sell Lands for Payment of Debts.

To make a Provision for Wife or Children.

To the Intent to settle other Lands to the same Uses.

So it may enable a Charge to be transferred from one Estate to another. *Pr. St. 10 & 11 W. 3. 27.*

So it may enable a Sale of Copyhold Lands. *Pr. St. 9 & 10 W. 3. 5.*

Or vest them in Trustees for Payment of Debts. *Pr. St. 9 & 10 W. 3. 32.*

So, it may make such a Will to be the last Will. *Pr. St. 12 & 13 W. 3. 27.*

It may adjudge a Minor of full Age. *4 Inst. 36.*

May make an Alien a natural Subject. *Ibid.*

(H. 6.) Matters Criminal.

A Bill of Attainder may be against a Man after his Death. *4 Inst. 36. As (H. 6.) Attainder: R. 3. was 1 H. 7. Bac. H. 7. 13.*

So against a Man not arraigned, nor put to his Answer, tho' he was in Custody:

As, against *Sr. John Mortimer*, 2 H. 6.—Against the Earl of *Essex Cromwell* 32 H.

8. But such Proceeding ought to be condemned. *4 Inst. 37.*

So an Attainder may be by Bill in all Cases where the Parliament pleases. *Cot. Abr. Pref. 10 Cot. Ab. 6.*

So, by the *St. 1 Jac. 2.* The Duke of *Mohmouth* was attainted for High Treason:

And by the *St. 8 W. 3. 4.* *Sir John Fenwick* was attainted for the same Offence:

And by the *St. 13 & 14 W. 3. 3.* The pretended Prince of *Wales*.

So it is usual by an Act of Attainder to enact, that such an one shall be attainted, if he do not render himself at such a Day.

So, by an Act, an absent Man was attainted, with a Reward to him who should apprehend him, whether he were alive or dead. *Cot. Ab. 6.*

[If a Man is attainted unless he render himself at a certain Day, and before the Day is taken into Custody, he may plead it as a Surrender. *John Murray of Broughton's Case*, 1746. *Foster 47.* N. B. This was denied in *Lord Duffus's Case*, in Parliament, 7 G. 2. *Comyns 440.* So in Outlawry. It was denied in *Sir Thomas Armstrong's Case*, 3 *State Trials* 895. but allowed in *Roger Johnson's Case*, M. 2 G. 2. *Str. 824.*]

[A Person may be attainted by an incomplete Description, if it is not repugnant to Truth; thus *Lord Forbes of Pittligo* was attainted by the Name of *Lord Pittligo*. *Foster 79.*]

[If an Act enacts, that if *A.* does not surrender on 12th *July*, he shall stand attainted from the 18th *April* preceding, he is capable of taking Lands by Descent in the intermediate Time; and such Descent does not become divested or avoided by his not rendering himself to Justice on 12th *July*, so as to prevent the Forfeiture in Prejudice of the Crown. *Lord John Drummond's Case*, 1751. *Foster 88.*]

So the Parliament sometimes makes an Act for the Banishment of a Person.

Tho' he be not before convicted for any Offence. *Cot. Abr. Pref. 10.*

(H. 7.)
Exile.

So the Parliament, by an Act, may impose a Fine or Imprisonment upon a Person, without a Trial by the Law. *Cot. Abr. Pref. 10.*

(H. 8)
Fine, and
Imprison-
ment.

(H. 9.) Matters Civil.

No Tallage or Aid shall be granted without the Assent of Parliament, by the Common Law. 2 *Inst. 59, 60, 528, 533.* *Rush. 429.* *R. in Parl. 3 Car. Rush. 513.* And by the Petition of Right. 3 *Car. Rush. 590.* By the *St. 25 Ed. 1. 6. Conf. Chart.* No Manner of Aids for any Occasion shall be taken, but by the Common Assent of the whole Realm, and for the Common Profit of it. *Vide 2 Inst. 529.*

(H. 9.)
Tallages.
Are granted
by Parliament
*Vide Præro-
gative, (D.
40)*

By *St. de Tallagio non concedendo*, 34 Ed. 1. *Nullum Tallagium, vel Auxilium ponatur seu levetur, sine Voluntate et Assensu Archiepiscoporum, Episcoporum, Comitum, Baronum, Militum, Burgensium, et aliorum liberorum com. de Regno. Vide 2 Inst. 532. 2 Rol. 174. l. 5.*

Custuma antiqua, viz. for every Sack of Wool 6s. 8d. for 300 Woolfells 6s. 8d. for one Last of Leather 13s. 4d. was granted by Parliament. 2 Inst. 59. 4 Inst. 29.

And no Custom can be enlarged, or imposed *de novo*, without the Assent of Parliament. 2 Inst. 60. But such Grant is void. 2 Inst. 61. *Vide Prærogative*, (D. 48.)

So, by the *St. 14 Ed. 3. Sess. 2. 1.* The Prelates, Earls, and Commonalty shall not be grieved with any Aid, or to sustain any Charge, if it be not by Common Assent in Parliament. 2 Rol. 172. l. 35.

By *St. 1 Ed. 3. 7. conf. by H. 4. 13.* Commissions to prepare Men of Arms, and convey them to the King, at the Charge of the Shire, shall not be granted any more. 2 Rol. 172. l. 25. 174. l. 25. *Vide War*, (B. 6, 7.)

By the *St. 25 Ed. 1. 7.* The King shall take such Aids, &c. without common Assent no more. (*Vide 2 Inst. 530.*)

By *St. 45 Ed. 3. 4.* No Imposition shall be put upon Wool, &c. without the Assent of Parliament. 2 Rol. 175. l. 2.

So no Tallage or Charge can be put by the Privy Council, without the Assent of Parliament. 2 Rol. 174. l. 10. *Vide Roy*, (E. 5.)

And tho' it was certified to the King by his Judges, 12 Car. That when the Safety of the Kingdom requires, the King may by Writ command all his Subjects to provide, &c. Ships, &c. for Defence of the Kingdom, and compel the doing of it in Case of Refusal; And tho' Judgment was given against *Hampden* for such Refusal, and the Case afterwards refused to be argued, 2 *Rush. 355, 480. Cro. Car. 524. 3 Rush. App. 159.* Yet it was afterwards declared illegal by Parliament, and Judgment given against the Levyers of the Tax. *Cro. Car. 601.*

And by the *St. 16 Car. 14.* Ship-money and the extrajudicial Opinion of the Justices and Barons, and the Writs, and the Judgment against *Hampden*, are contrary to the Laws, &c. of this Realm, &c.

Ibid. The Petition of Right shall be firmly observed, &c. and the Proceeding upon Ship-Writs, &c. be vacated, &c.

[*Stat. 5 G. 3. c. 25.* establishes new Rates for Postage of Letters. Amended by 7 G. 3. c. 50. And by 9 G. 3. c. 35.]

[*Stat. 18 G. 3. c. 26.* grants a Duty on all inhabited Houses of 6d. in the Pound from 5l. to 50l. and 1s. in the Pound on 50l. and upwards.]

[*Stat. 6 G. 3. c. 38.* imposes 3s. per Annum on every Dwelling-house inhabited; and on Windows, if seven in a House 2d. each, and so in a greater Proportion where there are more Windows up to twenty-five and upwards, for each of which 2s. shall be paid.]

(H. 19.) By the *St. 25 Ed. 1. 6. Conf. Chart.* All Aids shall be employed for the common Profit of the Realm. *Vide 2 Inst. 529.*

And a Committee was appointed for examining how Subsidies given for the Recovery of the Palatinates were employed. 1 Car. *Rush. 176.*

(H. 11.) Antiently no Custom was paid by Native or Alien, but for Wool, Woolfells, and Pells. 4 Inst. 29.

The first Custom, viz. 6s. 8d. upon every Sack of Wool, 6s. 8d. upon 300 Woolfells, and 13s. 4d. upon a Last of Pells, was imposed, as it seems, 3 Ed. 1. 2 Inst. 59. 4 Inst. 29. Dy. 43. b.

By the *St. 3 Ed. 1.* Upon Merchants Strangers 3s. 4d. in a Noble *ultra antiquam Custumam.* *Vide 2 Inst. 59. Forst. 15.*

But this does not extend to Wool made into Cloth. 4 Inst. 29.

The first Statute which imposed a Custom upon Cloths, was the 21 Ed. 3. (*Vide 4 Inst. 29.*)

And another Custom was imposed by the *St. 27 Ed. 3. St. 2. i. and 36 Ed. 3. 11. 2 Rol. 173. l. 15. (Vide 4 Inst. 30.)*
 By the Equity of which, all Cloths made of Wool only, are now charged *pro rata. R. 2 Jac. 2 Inst. 61, 2. 4 Inst. 31.*

Tonnage and Poundage was granted for the Safeguard of the Sea, and Commerce. *4 Inst. 32. 2 Rol. 174. l. 20. 181. l. 10. Forst. 37.*

(H. 12.)
 Tonnage and
 Poundage;
 how granted.

And at first Poundage only was granted: As, *2 R. 2. Forst. 38.*

Afterwards Tonnage and Poundage.

And that, *6d. per Pound. 2 Rol. 175. l. 25. Forst. 38.*

Afterwards *8d. for Poundage. 2 Rol. 175. l. 45.*

Afterwards *12d. 2 Rol. 176. l. 15.*

Then *2s. for Tonnage, and 6d. for Poundage. As, 5 R. 2. Forst. 38.*

Anno 21 Ed. 3. 2s. for every Ton of Wine, and 6d. per Pound for all Merchandize imported, being granted by Order of the King and the Peers, was first established by Parliament. 47 Ed. 3. Forst. 38.

And it was granted at first for Years. *2 Rol. 175. l. 5.*

Sometimes *pro hac vice. (Vide 4 Inst. 32.)*

Sometimes the Grant was intermitted. *Ibid.*

Anno 3 H. 5. It was granted for Life; and never before. 4 Inst. 32. 2 Inst. 61. 12 Co. 34. Forst. 39.

Anno 31 H. 6. It was granted for Life, but Woollen Cloths excepted; as, ever afterwards. 4 Inst. 32.

4 Ed. 4. and 12 Ed. 4. It was granted to him for Life; but without a Retrospect. 4 Inst. 32. 2 Rol. 175. l. 50.

So *1 H. 7. and ever since, it has been granted for Life. 4 Inst. 32, 3. As, 1 H. 8. not in print.*

So, by the *St. 1 Ed. 6. 13. the St. 1 Mar. Seff. 2. 18. the St. 1 El. 20. the St. 1 Jac. 33.*

By the *St. 6 W. & M. 1. it was granted only for five Years.*

By the *St. 12 Car. 2. 4. It was granted to the King for his Life.—So, by the St. 1 Jac. 2.*

By the *St. 6 Ann. 11. A Moiety of these Customs Inward was granted for 96 Years; and by the St. 1 Geo. 12. to the King and his Heirs.*

By the *St. 7 Ann. 7. S. 28. The other Moiety was granted to the Queen and her Heirs.—So, by the St. 3 Geo. 7. the Subsidy Outward.*

So *34 H. 6. 6. it was granted in Ireland, and was not due before. 2 Rol. 179. l. 15.*

And therefore, Where the King took it without a Grant by Parliament, it was unlawful.

So where the King had charged an Annuity upon the Subsidy of Tonnage and Poundage, it was avoided by Parliament. *2 Rol. 176. l. 20. Vide Prærogative, (D. 48.)*

A Subsidy was an Aid granted by Parliament upon Land and Goods, *viz. (H. 13.)*
4s. by the Pound upon Land, and 2s. 8d. upon Goods; and double upon the Goods of Aliens. 4 Inst. 33. Dy. 43. b. Subsidy, Fifteenth, &c.

The Fifteenth is also an Aid granted by Parliament; and it was at first *Quinto-decima Pars Bonorum mobilium.* But by Commission, *8 Ed. 3. it was ascertained in every Town of England, and recorded in the Exchequer, and afterwards granted according to such Assessment. 2 Inst. 77. 4 Inst. 34.*

A Tenth was, *Decima Pars Bonorum,* and rated according to the Fifteenth. *4 Inst. 34.*

The Commons did not use to give, besides Tonnage and Poundage, any more than one Subsidy, which amounted to *70,000l.* and two Fifteenths, each amounting to *20,000l.* and the Clergy only one Subsidy, which amounted to *20,000l.*

4 Inst. 33. Anno 31 El. the Commons first gave two Subsidies and four Fifteenths. 4 Inst. 33.—So, 32 H. 8. Forst. 33.

Anno

Anno 35 El. Three Subsidies and six Fifteenths.—So, *39 El.* (*Vide 4 Inst.* 33.)

Anno 43 El. Four Subsidies and eight Fifteenths. (*Vide 4 Inst.* 33.)

Anno 3 Car. they gave five Subsidies. *Ibid.*

The Manner of Taxation of a Subsidy was by two Taxers, who, being authorized by Commission, chose a Clerk to act with them, and these swore four or six in each County to make an Assessment, which was returned by Indenture. *Forst.* 34.

(H. 14.)
Upon what
Terms grant
ed.

And the Parliament may grant a Tax, or Tallage to the King, upon what Terms or Conditions they please. *Seld. Jud. Parl.* 17. *Cot. Abr.* 22.

As, *6 Ed.* 3. That the King for the Time to come should not burthen his Subjects. *Cot. Abr.* 13.

So, *22 Ed.* 3. A Fifteenth was granted, upon Condition that 40s. *per Sack* upon Wool should cease, and the Deceit of the Merchants should not be pardoned. *2 Rol.* 173. *l.* 30. 174. *l.* 15.

So Tonnage and Poundage at first were granted upon Conditions. *2 Rol.* 175. *l.* 25, 50.

So a certain Sum may be granted absolutely, and a large Sum upon Condition. *Cot. Abr.* 19.

[Commissioners must charge Land Tax on the several Divisions, Parochial or other, according to the Proportions assessed on them under *4 W. & M. Westminster Land Tax*, *H. 20 G.* 2. *Parker* 74.]

[*Exchequer* has a general Superintendence over all concerned in the Revenue: It is restrained where the Commissioners have final Jurisdiction, not where they exceed it, or neglect their Duty. *Ibid.*]

[Commissioners of Window-duty (and of others *Sembl.*) are only answerable for what they respectively receive; not for the Deficiency of others; but the Division must make it good. *Rex v. Artillery Ground*, *P.* 27 *G.* 2. *Parker* 167.]

[The Deputy Post-master cannot demand any additional Sum for delivering Letters at the Houses of the Persons residing in the Town. *Barnes v. Foley*, *H.* 8 *G.* 3. 4 *B. M.* 2149.]

[Letters must be delivered in all Post Towns on paying the legal Postage only. *Rowning v. Goodchild*, *In C. B.* *T.* 13 *G.* 3. 4 *B. M.* 2153. 3 *Wilf.* 443.]

(H. 15.)
A Caution
that no such
Grant be af-
terwards
made.

By the *St.* 25 *Ed.* 1. 7. and 34 *Ed.* 1. *St.* 4. 3. It was enacted, that the *Maletolt* upon Wools be released, and nothing taken for it in future. *2 Rol.* 173. *l.* 40, 45.

By the *St.* 25 *Ed.* 1. 5, 6. The King grants, that he will not draw any Aids, Tasks, or Prises into a Custom for any Thing done heretofore. *2 Rol.* 173. *l.* 50.

So, 36 *Ed.* 3. a great Subsidy being granted, it was provided, that it be not drawn into Example. *2 Rol.* 180. *l.* 10.

(H. 16.)
Begin in the
House of
Commons.

So the Grant of a Supply ought to begin in the House of Commons; and, if it be proposed by the Lords at a Conference, it will be a Breach of Privilege. *R.* 16 *Car.* 3 *Rush.* 1146.

(H. 17.)
The Method
of granting a
Supply.

No Charge shall be imposed upon the Subject, but in a Committee of the whole House. *Vide Ante*, (*E.* 13.)

Yet, in private Bills, this is sometimes dispensed with.

No Money shall be given to the King, but in a Committee.

If a Motion be, that a Supply be granted to the King, it shall be considered in a Committee of the whole House. 15 *Feb.* 1700. So, 25 *Oct.* 1702. 30 *Nov.* 1710.

If it be resolved in a Committee in the Affirmative, the Chairman reports, that the Committee has resolved it, and directed him to report it when the House will receive it, and another Day is appointed for the Report. 18 *Feb.* 1700. So, 27 *Oct.* 1702. 1 *Dec.* 1710.

When

When the Report is made, the House appoints a Day to resolve themselves into a Committee to consider of the said Supply. 28 Oct. 1702. 2 Dec. 1710.

When any Resolution is made in a Committee, a Day is appointed for the Report. 30 Oct. 1702.

When a Supply is resolved by the House, Estimates of the Charge are usually directed to be laid before the House. 2 Dec. 1710.

[If a Company is established by Parliament for a particular Purpose (as insuring *Ships*) with a limited Fund, which is exempted from being taxed, and the Company afterwards by Charter has its Power extended (as to insure Houses, &c.) with an increased Fund, and they carry on their Business under both jointly; the Company is liable to the Land-tax for their whole Stock, and in their corporate Capacity. *Royal-Exchange Assurance v. Vaughan*, H. 30 G. 2. 1 B. M. 155.]

By Act of Parliament, the Succession to the Crown may be limited. *Vide* (H. 18.)
Roy, (A. 3.) Limitation of the Crown.

By the St. 7 H. 4. 2. The Crowns of *England* and *France*, &c. are entailed to King *Henry* and the Heirs of his Body, and then to his four Sons by Name, and the Heirs of their Bodies successively.

By the St. 25 H. 8. 22. The Crown is entailed to H. 8. and the Heirs of his Body, viz. to the first Son of him and Q. *Anne*, in Tail general and so to every other Son of their Bodies successively in Tail general; and for want of such Issue, to the Son and Heir Male, and so to every other Son and Heir Male of the Body of H. 8. successively in Tail general; and for want of such Issue, to the first Issue Female of H. 8. and Q. *Anne*, viz. to *Eliz.* in Tail general, and so to every Issue Female, &c. and for want of such Issue, to the right Heirs of H. 8.

By the St. 28 H. 8. 7. Q. *Mary* and *Eliz.* are declared illegitimate, and the Crown entailed to the King H. 8. and the Heirs of his Body, viz. to the first Son of him and Q. *Jane*, &c. with Power to H. 8. to devise, &c.

By the St. 35 H. 8. 1. After the Death of H. 8. and Prince *Edward*, and the Heirs of their respective Bodies, the Crown is entailed to *Mary* and the Heirs of her Body, then to *Eliz.* and the Heirs of her Body, &c.

Afterwards by the St. 1 Mar. 2 Sess. 4. and by the St. 1 Mar. 2 Parl. 1. It is declared, That after the Decease of K. *Edw.* 6. the Imperial Crown, &c. did descend, remain, and come to Q. *Mary*, by due Course of Inheritance, and by the Laws and Statutes of this Realm.

And by the St. 1 El. 3. It was recognized, That in her Majesty and the Heirs of her Body, the Imperial and Royal Estate, Crown and Dignity of this Realm, was as fully invested, as the same were in K. *Hen.* 8. K. *Edw.* 6. or the late Q. *Mary* at any Time since the St. 35 H. 8. 1.

By St. 1 W. & M. 2 Parl. 2. The Crown shall be and continue to their Majesties K. *William* and Q. *Mary*, during their Lives, and the Life of the Survivor; and after their Decease, to the Heirs of the Body of her Majesty; and for Default of such Issue, to the Princess *Anne* of *Denmark*, and the Heirs of her Body, &c.

By the St. 12 & 13 W. 3. 2. In Default of Issue of the said Princess *Anne*, the Crown is limited to remain to the Princess *Sophia* (Daughter of *Eliz.* Q. of *Bohemia*, who was Daughter of K. *James* the First) and the Heirs of her Body, being Protestants.

[So Parliament may appoint a Regent, in case the Crown shall afterwards descend to a Minor; and Stat. 24 G. 2. c. 24. appointed *Augusta* Princess Dowager of *Wales* Regent, in case any of her Children succeeded to the Crown under eighteen Years of Age.]

[Stat. 5 G. 3. c. 27. Impowers the King to appoint the Queen, the Princess Dowager of *Wales*, or some Person descended from *George* 2. and Resident in *Great-Britain*, Guardian of his Successor, and Regent till the Successor is eighteen; and establishes a Council of Regency, and other Regulations.]

(H. 19.)
How the Li-
mitation may
be secured.

By the *St. 25 H. 8. 22.* All shall swear to maintain the Contents of that Sta-
tute, which entailed the Succession of the Crown to the Issue of *Q. Anne.*

By the *St. 26 H. 8. 2.* The Oath there prescribed is, to maintain such Suc-
cession, and to repute the Oath to any other Person as null, and not to permit,
or attempt, any Thing to the Hindrance thereof, on any Pretence, or by any
Means.

By the *St. 28 H. 8. 7.* All Subjects shall swear to maintain the Succession,
&c. and if any other Oath hath been made, to repute it as vain, and not to at-
tempt, or permit, any Thing to the Hindrance, &c.

By the *St. 35 H. 8. 1.* All shall take the Oaths for the Maintenance of the
Succession of that Act; and if they have taken former Oaths, shall esteem it of
the same Effect, as if they had taken this.

By the *St. 1 El. 3.* The Parliament promise to defend the Queen and the
Heirs of her Body in their Title to the Crown, to the utmost of their Power,
and therein to spend their Bodies, Lands, and Goods, &c.

So, by the *St. 1 W. & M. 2 Parl. 2.* and by the *St. 12 & 13 W. 3. 2.* The
Parliament submit themselves and their Posterities to the Limitations of the
Crown thereby settled; and promise to maintain the same with their Lives and
Estates against all Attempts, &c.

By the *St. 13 W. 3. 6.* and the *St. 1 Ann. 22.* All in Office, &c. ought to
take an Oath to maintain the Succession limited by the said Act of 12 & 13 *W.*
3. 2.

By *St. 1 Ann. 17. 2 Parl.* If any attempt to hinder or deprive the next in
Succession from succeeding, he shall be guilty of High Treason.

(H. 20.)
Settlement of
the King's
Revenue.

So the Parliament may appropriate a Revenue for the Support of the Crown.

[By *Stat. 1 G. 3. c. 1. 800,000 l. per Annum* out of the aggregate Fund, is
settled on the King for Life: His Majesty having signified his Consent, that the
Hereditary-Revenue might be disposed of for the publick Utility, it is thereby
made Part of said Fund. And, as Mr. Justice *Blackstone* observes, *the Publick is*
a Gainer of upwards of 100,000 l. per Annum, by this disinterested Bounty of his
Majesty.]

[By *Stat. 2 G. 3. c. 1. 100,000 l. per Annum*, out of the aggregate Fund, is
settled on the Queen for Life, after the King's Demise.]

[By *Stat. 7 G. 3. c. 19. 8,000 l. per Annum* apiece, (out of the aggregate Fund
during the King's Life, and then out of Hereditary Duties, and Post-Office
then belonging to the Crown) settled on Dukes of *York, Gloucester and Cumberland.*]

Stat. 18 G. 3. c. 31. Grants 60,000 *l. per Annum* to the King's six younger
Sons 30,000 *l.* to his five Daughters 8,000 *l.* to the Duke of *Gloucester's* Son,
and 4,000 *l.* to his Daughter.]

[By *Stat. 17 G. 3. c. 21. 100,000 l. per Annum* settled on the King for Life.]

(H. 21.)
Resumption
of Grants.

So the Parliament may make a Resumption of a Grant made by the King:
And this was usual in Times past. *Cot. Abr. Pref. 9.*

(H. 22.) Matters Martial.

(H. 22.)
To what the
Authority of
Parliament is
necessary.

By several Statutes, none shall be charged to take Arms himself, or to find
Men of Arms, without Authority of Parliament, if he be not bound to it by
Tenure. 2 *Inst. 528.*

Nor, to go to War out of his County. *Ibid.*

Nor, to give Wages to the Conveyors of Soldiers, nor to Soldiers going to
Scotland, Gascony, &c. which Statutes are only Declarations of the Common
Law. 2 *Inst. 528. Vide War, (B. 6, 7.)*

And the Commons, 1 & 7 *H. 5.* made Protestation, that they are not obliged
to the Maintenance of the King's foreign Wars. 2 *Inst. 528.*

By the *St. of Right, 3 Car. ** None shall be obliged to quarter Soldiers, or
Mariners.

* [*Vide the*
St. 16 Car.
14.]

And

And no Commissions shall issue to execute them by Martial Law.—It was done otherwise, 2 *Car. Rusb.* 419.

And therefore Soldiers cannot be billeted upon any Subject against his Consent. 3 *Rusb.* 1215.

So Martial Law cannot be used in *England*, without Authority of Parliament. (H. 23.)
3 *Rusb.* 1199. *App.* 76. *ad* 81. Martial Law.

To the King alone it belongs to make Peace or War. *Acknowledged by the Commons*, 19 *Jac.* *Rusb.* 45. *Vide Prærogative*, (C. 1.) (H. 24.)
What the King may do by his Prærogative.

(H. 25.) Matters Marine.

The Maintenance of the Navy is a Subject worthy of the Parliament, and proper for it. 4 *Inst.* 50.
Vide Navigation, (I. 1, &c.)

(I) In what Method Matters of Parliament shall be treated.

THE Commons have a Liberty to treat of Matters in Parliament, in what Order they please. *By the Commons*, 19 *Jac.* *Rusb.* 53. *But the King rased it out of the Journal.* *Rusb.* 54.
Vide Ante, (G. 7, &c.)

(K) What Things the Parliament cannot do.

THE Parliament cannot by any Act restrain the Power of a subsequent Parliament. 4 *Inst.* 42.

Nor make a Statute, which a subsequent Parliament cannot alter. 4 *Inst.* 42. *Bac. H.* 7.

So it cannot do any Thing out of the Limit of it's Jurisdiction: As, it cannot make a Person inheritable in *France*. 2 *Jon.* 12.

Nor make a Determination upon an Original Petition, in a Matter which does not come before them by Error, &c. *Skin.* 523. *Vide Post*, (L. 1, &c.)

So an Act of Parliament shall not change the Laws of Nature. And therefore, if an Act says, that a Man shall be a Judge in his own Cause, it shall be void. *Per Hob.* *Hob.* 87.

Vide Post, (L. 48.)

(L) Judicature of Parliament.

(L. 1.) Upon a Writ of Error.

A Writ of Error lies in Parliament of a Judgment in *B. R.* 4 *Inst.* 21. (L. 1)
But not of a Judgment in *C. B.* 4 *Inst.* 22. *Ha. J. P.* 21. When it lies.

The Judicature of Parliament is; 1. Upon a Writ of Error. 2. Upon an Adjournment. 3. Upon an Appeal. 4. Upon an Accusation against a Delinquent. 5. Upon a Petition. 6. Upon Privilege. *Seld. Jud. Parl.* 8. (3 *Vol.* 1590.)

A Writ of Error lies in Parliament of a Judgment in *B. R.* in the *Exchequer*, in the *Exchequer-Chamber*, in *Chancery*, or before Justices in *Eyre*. *Co. L.* 71. *b. 72. a.* *Vide Pleader*, (3 *B.* 6.)

And it shall be before the Lords only, without the Commons. *R. 1 H.* 7. 20. *a.* *Hal. J. P.* 19. *R.* 12 *Co.* 63.

Yet, a Judgment there is virtually the Judgment of the whole Parliament. *Vide Sal.* 510.

But Error does not lie in Parliament upon a Judgment in *C. B.* before it be affirmed or reversed in *B. R.* *Seld. 3 Vol.* 2 *P.* 1526. *Skin.* 523.

L. 2.) Before Error in Parliament, there ought to be a Petition, and a Licence under the King's Hand. *Per Coke, 2 Bul. 162.*
 How the Proceeding shall be. Upon a Petition to the King in French or English, and his fiat *Justitia*, a Writ of Error goes to the Ch. J. of B. R. to remove the Record in *præsens Parliamentum*. 4 *Inst.* 21. 1 *H. 7.* 19. b. *H. Parl.* 18.

Then the Ch. J. brings the Roll, and a Transcript of it, to the House of Lords, and there leaves the Transcript, after it has been examined with the Roll, and returns with the Roll itself. 4 *Inst.* 21. 1 *Rol.* 14. 2 *Bul.* 162. *Vide Pleader*, (3 B. 13.)

And with the Transcript leaves the Writ of Error, and the Bill, or Petition upon which it was allowed. 1 *H. 7.* 19. b.

And it is sufficient under the Seal of the Ch. J. tho' the Writ of Error commands the Court to send the Record *sub Sigillo*. *R. 1 Rol.* 14.

(L. 3.) After the Transcript is delivered by the Ch. J. into Parliament, the Plaintiff in Error assigns his Errors. 2 *Sand.* 224. (*Vide 4 Inst.* 21.)

And the Errors ought to be in Writing, and left with the Clerk of the Parliament. 1 *H. 7.* 19. b.

When Errors are assigned in Parliament, a *Scire facias* issues against the Party, returnable at the same, or a subsequent Parliament. 4 *Inst.* 21. *Seld.* 3 Vol. 2 P. 1526.

And the Plaintiff shall shew the Errors in his Bill, upon which he prays the *Scire facias*. 4 *Inst.* 22. *Ha. 7. P.* 20.

(L. 4.) After Errors assigned, the Defendant shall plead, *In nullo est Erratum*. 2 *Sand.* 224.

Vide Pleader, (3 B. 18, 19.)

If Error in Fact be assigned, it shall be sent to B. R. to be tried. *Skin.* 523.

(L. 5.) The Usage is, that the Lords only in the Upper House give Judgment upon a Writ of Error. *H. Parl.* 19. *Vide Ante*, (L. 1.)

So, always where the Commons are Petitioners, the Judgment shall be by the King, and the Lords. *H. Parl.* 26, 27.

And the Lords ought to give the same Judgment, which ought to have been given by the Court that gave the first Judgment. *Vide Pleader*, (3 B. 20.)

And therefore, if the Lords, upon Error in Ejectment, reverse a Judgment in B. R. given for the Defendant and that the Plaintiff be restored, B. R. shall not give Judgment, that the Plaintiff recover his Term; but before a *Remittitur* entred upon the Roll, Application may be made to the Lords, to give a compleat Judgment. *R. Ca. Parl.* 57. 4 *Mod.* 127.

(L. 6.) Adjournment to Parliament.

So, by the Common Law, a Case of Difficulty might be adjourned into Parliament *propter Difficultatem*. *Co. L.* 72. a. 4 *Inst.* 105. 2 *Inst.* 408. *Cot. Abr.* 30.

And after a Determination there, a Writ shall be, commanding the Judges to give Judgment accordingly. *Cot. Abr.* 30.

By the *St.* 14 *Ed.* 3. 5. A Prelate, two Earls, and two Barons shall be chosen every Parliament, and commissioned by the King, to hear Complaints of Delays, or Grievances in *Chancery*, B. R. C. B. or *Exchequer*, shall cause the Judges of the Court where the Delay is, to bring the Process before them, and calling the Chancellor, Treasurer, Justices and Barons, as they think fit, to assist them, shall make a good Judgment, and send to the Justices where the Plea did depend, to give Judgment accordingly. *Seld.* 3 Vol. 2 P. 1530.

And if the Case was of such Difficulty as they could not determine it, they shall bring it to the next Parliament, where Accord is to be what Judgment shall be given; which shall be sent to the Judges, with Command to proceed to Judgment without Delay.

By

By which Statute, the Adjournment to Parliament in Cases of Difficulty was affirmed. *Co. L. 72. a.*

And Remedy was also provided against Delays in Judgments. *Ibid.*

But this Provision was only for Intervals of Parliament.

(L. 7.) Appeal to Parliament ; When it lies.

So an Appeal lies in Parliament from a Decree in *Chancery*. *Adm. Ca. Parl.*

15, 17, 20. And it lies as well, where by the Decree the Bill is dismissed, as where Relief is given without Cause. *Ca. Parl. 18, 67, 69, 76.*

And such Appeals have been allowed without Restraint, since 21 *Jac. 1.* *Ca. Parl. 81.*

They were allowed by the Commons, *inter Skinner and East-India Company.* *Ca. Parl. 81. R. Cont. by the Commons. Car. 2. and Ann.*

And they are claimed by the Lords, tho' a Member of the House of Commons be a Party.

And *Coke Ch. J.* said, That a Defect in a Decree shall be redressed only by a Reference to the Justices, upon a Petition to the King. *1 Rol. 331.*

So an Appeal lies from a Decree in *Chancery* in *Ireland* to the Lords of Parliament here ; and not to the Parliament in *Ireland*. *R. Ca. Parl. 83 **

So it lies from a Decree in *Chancery*, upon Exceptions to a Decree by Commissioners for Charitable Uses. *Ca. Parl. 110.*

So it lies upon a Decree by the Delegates. *Ca. Parl. 110. Quære. Cont. 2 Ver. 118.*

So an Appeal lies from a Decree of the Lords in the Parliament in *Ireland*, to the Parliament of *England*. *

But the Lords of *Ireland* denied the Jurisdiction of the Lords in the Parliament of *Great Britain* ; and 25 *Sep. 1715* voted, that he who shall make such Appeal, shall be an Enemy to his Country. *

* *Vide the Stat. 6 Geo. 5.*

which declares that the House of Lords of *Ireland* have no Jurisdiction to judge of, affirm, or reverse any Judgment, &c. there.

But an Appeal does not lie to Parliament upon a Decree in *Chancery* upon the Statute for Charitable Uses ; for by the Statute no Jurisdiction is given but to the *Chancery*. *2 Ver. 118.*

[Nor from an Order of the Lord Chancellor (intrusted with the Care of Ideots and Lunatics, by the King's Sign Manual) touching a Lunatick, but to the King in Council. *Pitt's Case, in the House of Lords, 14 Feb. 1726. 3 P. W. 108.*]

After an Appeal to Parliament, if the Parliament be prorogued, the *Chancery* shall proceed in the Account. *1 Ver. 344.*

(L. 8.) Accusation in Parliament.

The Parliament will not proceed to Judgment against a Delinquent without the Accusation of some Body. *Seld. Jud. Parl. 11. (3 Vol. 2 P. 1591.)* (L. 8.) When necessary.

For they cannot be Accusers, and Judges. *Seld. Jud. Parl. 11. (3 Vol. 2 P. 1591.)*

So they cannot join with the Commons or others in an Accusation. *Seld. Jud. Parl. 12. (3 Vol. 2 P. 1591.)*

A Peer cannot be indicted in Parliament. *Seld. Jud. Parl. 40. (3 Vol. 2 P. 1602.)*

There are four Manners of Accusation in Parliament. 1. By Appeal. 2. By Complaint, or Petition. 3. By Information of the Attorney General. 4. By the Commons : And this by way of Complaint, or Impeachment. *Seld. Jud. Parl. 11. (3 Vol. 2 P. 1591.)* (L. 9.) How it shall be made. By Appeal.

One Peer might appeal another Peer in Parliament for Treason, &c. and thereupon deliver his Gantlet and Gages for his Proof, and pray an Answer, and, for Default, Judgment. *Seld. Jud. Parl.* 82. (3 Vol. 2 P. 1634.)

But now by the *St. 1 H. 4. 14.* such Appeals are abolished.

And also all Impeachments, or Accusations originally by one Peer against another. *R. by the Judges, and afterwards by the Lords, 14 July 1663. Life of Clar. 215, ad 222.*

(L. 10.)
By Complaint.
Ex parte Regis, &c.

A Complaint may be the Foundation of a Proceeding in Parliament. 1. *Ex Parte Regis.* 2. *Ex Parte Dominorum.* 3. On the Part of the Commons. 4. Upon the Complaint, or Petition of a private Person. (*Vide Seld. 3 Vol. 2 P. 1591.*)

As, if a Peer petition the King, and by the King's Command it is referred to the Parliament; the Lords will proceed upon it, without an Information, or other Foundation. *Seld. Jud. Parl.* 54. (3 Vol. 2 P. 1599.)

So, by the King's Command, the Parliament may proceed against a Peer upon a Process against him in another Court: As, in the Court of Chivalry. *Seld. Jud. Parl.* 57. 33. (3 Vol. 2 P. 1609.)

So upon an Indictment before Commissioners removed into Chancery, and by *Mittimus*, to Parliament. *Seld. Jud. Parl.* 40, 59. (3 Vol. 2 P. 1606.)

How Proceedings shall be upon a Complaint to the Lords, by the Commons, *Vide Post*, (L. 14, 15.)

(L. 11.)
By a private Subject.

A Complaint by a private Person is not usual for a publick Misdemeanor, except where he has an Interest in it. *Seld. Jud. Parl.* 66. (3 Vol. 2 P. 1612.)

As Articles were exhibited by the Earl of *Bristol* against the Duke of *Buckingham* and Lord *Conway*, in the House of Peers, for a Misdemeanor. 1 *Rash.* 262, 264.

Articles were exhibited by the Lords and others of the Privy Council, and two Judges, to the King, against Cardinal *Wolfey*. 4 *Inst.* 89.

But a Complaint in Parliament originally by a private Subject, Peer, or Commoner, against another, for a Misdemeanor, as well as for Treason, is now illegal, if it be not by Licence of the King, or by his Attorney General. *Life of Clar.* 223.

Yet upon Complaint, that such a one has abused the House, or any Peer, the House may examine it, and inflict a Punishment as to them seems good.

Upon Examination it appeared, that one combined to charge an innocent Person for Words in Slander of the House; he was fined, imprisoned, and set in the Pillory by Order of the Peers, without Trial by a Jury. 2 *Mod. Ca.* 340.

(L. 12.)
By Information.

An Information may be exhibited to the Parliament by the King's Attorney General for High Treason. *Seld. Jud. Parl.* 34, 47. (3 Vol. 2 P. 1600, 5, 6.)

So, for any Misdemeanor.

An Information by the Attorney General shall be exhibited *ex Officio*.

Or by Command of the Lords, upon a Complaint of the Commons, &c. to examine them. *Seld. Jud. Parl.* 14, 33, 62. (3 Vol. 2 P. 1592, 1599.)

(L. 13.)
By Indictment.

So, if an Indictment be against a Peer in *B. R.* for Murder or other Capital Crime, it may be removed to the House of Peers by *Certiorari*, and there the Proceedings shall be upon it.

[A Peer indicted of Felony and Murder, and tried and convicted thereof before the Lords in Parliament, ought to receive Judgment for the same, according to the Provisions of the Act 25 G. 2. *E. Ferrers's Case*, 1760. *Foster* 138.]

[If the Day appointed by the Judgment for Execution, should lapse before such Execution done (which however the Law will not presume) a new Time may be appointed for the Execution, either by the High Court of Parliament before which such Peer shall have been attainted, or by the Court of *B. R.* the Parliament not then sitting; the Record of the Attainder being properly removed into that Court. *Ibid.*]

Vide Post. (L. 16.)

So the Commons may exhibit an Accusation to the Lords in Parliament, by Petition, or Impeachment. (*Vide Seld. 3 Vol. 2 P. 1591.*)

The Commons may exhibit a Complaint in general by Petition, without naming any Person in particular: As, a Complaint, of the Farmers of the Customs, for Extortion. *Seld. Jud. Parl. 12. (3 Vol. 2 P. 1591.)*

Upon such Complaint by the Commons, the Lords may order, that the Merchants, &c. against whom the Complaint was, be summoned, and their Answer heard. *Seld. Jud. Parl. 13. (3 Vol. 2 P. 1592.)*

If upon Examination of a Complaint any one appears Criminal, he shall be arraigned at the Suit of the King: For when an Accusation by the Commons is general, it is not the Suit of the Commons, but of the King. *Seld. Jud. Parl. 14. (3 Vol. 2 P. 1592.)*

Or the Commons may afterwards impeach the Parties discovered. *Seld. Jud. Parl. 14. (3 Vol. 2 P. 1592.)*

For High, or Petit Treason, or Felony, or Misprision of Treason, a Peer shall be tried by his Peers in Parliament, upon an Impeachment. *Vide Rush. 268.*

So, upon an Indictment, if the King constitutes an High Steward. *4 Inst. 23. 2 Inst. 49. H. Parl. 23.*

And the Lords are Judges, whether it be Treason, or not. *4 Inst. 23.* But the Bishops shall not be present. *4 Inst. 23. Sta. 153. a. 10 Ed. 4. 6. b.*

And the Number of Peers present ought to be twelve or more. *2 Inst. 49. Sta. 153. b. 3 Inst. 28, 30.*

The Trial *per Pares* is of great Antiquity. It was 8 *W. 1. 2 Inst. 50.*

The Queen Consort, or Dowager, shall be tried *per Pares*. *Ibid.*

So all Women, noble by Birth or Marriage, unless since the Marriage, they have married under the Degree of Nobility. *2 Inst. 50. By the St. 20 H. 6. 9.*

But for Offences under Treason, Felony, or Misprision, a Peer shall be tried by a Jury. *2 Inst. 49.*

So, upon an Appeal. *Ibid.*

So, one of the Nobility of another Kingdom. *3 Inst. 30.*

So, all under the Degree of Nobility, for Treason or Felony. By the *St. 4 Ed. 3. 2 Inst. 50.*

And the Indictment shall be found by a Jury. *2 Inst. 49. 3 Inst. 28.*

And if the Indictment be found against a Peer in *B. R.* or removed thither, he may plead a Pardon before the Justices there, tho' he shall not confess, nor plead *Not Guilty* before them. *2 Inst. 49.*

So, if upon an Indictment he does not appear, Process shall go to an Outlawry; and he shall be outlawed *per Judicium Coronatorum*. *Ibid.*

So, by the *St. 25 Ed. 3. St. 5. 2.* For High Treason, every one ought to be tried by People of his Condition.

And where the *St. 35 H. 8. 2.* provides for the Trial of Treason, or Misprision of Treason in *B. R.* or upon a Special Commission in a County where the King assigns, it was enacted, That a Peer, in such Case, shall have his Trial by his Peers.

So, by the *St. 1 & 2 Ph. & M. 10.* (which provides, That all Trials for Treason shall be had according to the due Course of the Common Law) it was provided, That a Peer indicted should answer the same Indictment, and have his Trial by his Peers.

So, by the *St. 5 El. 1 & 11. 13 El. 2. 18 El. 1, and 23 El. 1.* for Treasons by those Statutes.

So, by the *St. 27 El. 2. and 3 Jac. 4.* for Treasons made by those Statutes.

So it shall be in all Cases, where a new Treason, or Felony, is made by a Statute, tho' the Statute does not expressly provide for it. *Sta. 153. b.*

A Peer cannot waive his Trial by his Peers, and consent to be tried by a Jury. *R. Kels. 56. Vide Dignity, (F. 1, 2.)*

And if he will not put himself upon his Peers, Judgment shall be against him as a Traitor. *Kelg. 57.*

[Every Proceeding in the House of Peers, acting in its judicial Capacity, is a Proceeding before the King in *Parliament*, and the House is the Court of our Lord the King in Parliament.]

[It is founded on immemorial Usage, and is Part of the original Constitution.]

[It is open for all Purposes of Judicature during the Continuance of the Parliament; it openeth and shutteth with the Session, as *B. R.* with the Term.]

[Its Authority is independent of any Special Powers derived from the Crown.]

[On the Trial of a Peer before it, for a capital Offence, whether on Impeachment or Indictment, it is the same Court, whether an Officer with the Title of Steward of *England*, is appointed to preside during Trial, and until Judgment, or not, tho' usual and expedient to make such Appointment.]

[Every Peer votes on Law as well as Fact; the Majority determines. The High-steward votes only as a Peer.]

[It acteth in its *judicial* Capacity, in every Order touching the Time and Place of Trial, putting it off from Time to Time, allowing Counsel or not, &c. all before the Appointment of High-steward; it has directed in what Manner, and by what Form of Words he should be appointed*, therefore its Existence cannot depend on that Appointment. It has received and recorded a Prisoner's Confession, which amounts to a Conviction before his Appointment†; it has allowed Prisoners the Benefit of Acts of general Pardon‡, without the Appointment of a High-steward, and after his Commission dissolved.]

[The Lords, on 12 May 1679, (on the Proceedings against Lord *Danby* and the five Popish Lords) declared that the Office of High-steward upon Trial of Peers on Impeachments, is not necessary to the House of Peers, but that they may proceed in such Trial if an High-steward is not appointed.]

[The Commission then running thus, "*Ac pro eo quod officium seneschalli Angliæ (cujus presentia in hac parte requiritur) ut accepimus jam vacat;*" it was apprehended this implied the Necessity of a High-steward; and therefore by the Committees of the Lords and Commons, it was agreed the Commission should be recalled, and a new Commission issue, with these Words instead of them; *ac pro eo quod procures et magnates in parlamento nostro assembleti nobis humiliter supplicaverunt. ut seneschallum Angliæ pro hac vice constituere dignaremur.*— And all Commissions since, on Impeachments, have been in the same Form.]

[The Commissions still run in the first Form, on Indictments, but the Lords declare that the Appointment of a High-steward alters not the Nature of the Court, which still remains the Court of Peers in Parliament: this applies to Indictments as well as Impeachments.]

[The Commission recites that *A.* is indicted, that the King intends he should be judged *before himself in this present Parliament*, that the Office of Steward (whose Presence is required on this Occasion) is vacant; and appoints *B.* Steward for this Time to execute the Office, with all Things due in that Behalf.]

[This does not constitute a Court of the High-steward, a Right of Judicature, which the Commission supposes to be in a Court then subsisting before the King in Parliament; he is to preside as Speaker or Chairman during Trial, and till Judgment; and in that Respect, and no other, his Presence is required.]

[On Indictments, before the High-steward is appointed, they order *Certiorari* to remove them. It is made returnable before the King in Parliament; it is received and read. They construe Acts of Parliament relating to the Conduct of the Court and the Right of the Subject, at the Trial, and make Resolutions thereupon. *Ld. Kilmarnock's Case.*]

[Therefore, tho' the Office of High-steward determines before Execution done according to the Judgment, yet the Court of Peers in Parliament, where that Judgment was given, subsists for all Purposes of Justice during the Sitting of the Parliament, and may therefore appoint a new Day for Execution. *E. Ferrers's Case*, 1760. *Foster* 138.]

[*Vide ante*, (L. 13. Officer, E. 5.)]

[Peers tried in full Parliament, are intitled to the Benefit of 7 *W. 3. c. 3.* in its full Extent. *Ld. Kilmarnock's Case. Foster* 149, 247.]

* *Ld. Dauby*, and the five Lords.

Ld. Lovat.

† *Ld. Derwentwater.*

‡ *Ld. Carwath* *Widdrington*, *Salisbury.*

By the Common Law, twelve at least of the Peers ought to be present: For a Verdict by a less Number of Peers would not be good. *R. Mo. 622.*

And if more Peers are present, the Verdict shall be by the major Part, so that twelve, at least, agree to it. *Kels. 56. R. Mo. 622.*

And therefore it was usual to have twenty-three Peers at a Trial, at least. *Kels. 56.*

And to authorize the High Steward to summon which Peers he pleases. *Mo. 621.*

But now, by the *St. 7 W. 3. 3.* On every Trial of a Peer or Peerefs, all the Peers shall be summoned twenty Days at least before Trial; and every one appearing (having taken the Oaths, &c.) shall have a Vote.

Provided, that the said Act extend not to Impeachments, or other Proceedings in Parliament in any Kind.

[All the Peers and Spiritual Lords are summoned, tho' the Trial is in full Parliament. *Ld. Kilmarnock, &c. Case, 1746. Foster 247.*]

[But summoning the Peers is not *absolutely and indispensably* necessary. *D. per Foster J.* for the Act provides, that every Peer so summoned and appearing shall vote *in the Trial*, which must mean throughout the Trial, and Bishops cannot vote to condemn or acquit. *Foster 248.*]

A Peer cannot challenge any Peer by whom he ought to be tried. *R. Mo. 621, 622. Kels. 54. in Marg.*

And therefore, a Peer shall be a Trier, tho' he was a Commissioner of Oyer and Terminer, before whom the Indictment was taken. *R. Kels. 58.*

If a Person, charged in Parliament with a Crime, or Misdemeanor, be absent, a Writ shall be directed to the Sheriff to summon him. *4 Inst. 39.*

Or, to the Party himself. *4 Inst. 39. Seld. Jud. Parl. 106. (3 Vol. 2 P.)*

If the Party cannot be found, there shall be a Writ to the Sheriff to arrest all his Goods and Chattels. *Seld. Jud. Parl. 23, 99. (3 Vol. 2 P. 1596, 1624.)*

If the Party does not yet appear, there shall be a Proclamation throughout all the Kingdom, that he appear, otherwise such Judgment will be given against him. *Seld. Jud. Parl. 95. (3 Vol. 2 P. 1621.)*

So sometimes an Act of Parliament shall be made, that if he does not surrender himself before such a Day, he shall be attainted.

A Peer may be impeached in Parliament by Articles exhibited at the Suit of the King by the Attorney-General; as, against the Earl of Bristol. *Rush. 249. Vide Ante, (L. 12.)*

By Articles exhibited by another Peer. *Rush. 254.*

So the Commons may, by *Parol*, charge a Peer before the King and Lords. *Seld. Jud. Parl. 24. (3 Vol. 2 P. 1596, 1598, 9.)*

Or, a Commoner. (*Vide Seld. 3 Vol. 2 P. 1598, 9.*)

So, before the Lords at a Conference. *Seld. Jud. Parl. 30, 31, 32. (3 Vol. 2 P. 1598, 1599.)*

The Right of Impeachment by the Commons was allowed by the Lords, 20 June 1701.

Upon an Impeachment by *Parol*, the Lords by their Committee may draw a particular Charge, and deliver it to the Party accused. *Seld. Jud. Parl. 31. (3 Vol. 2 P. 1599.)*

Or the Commons, by a Committee, may draw a particular Charge, and send it to him. *Seld. Jud. Parl. 32. (3 Vol. 2 P. 1599.)*

Or the Party, being a Peer, upon Report of a Conference, may make Answer. *Ibid.*

But the most usual Proceeding is, to send an Impeachment by some Member to the Bar of the Lords, and afterwards to exhibit Articles. *Seld. Judg. Parl. 32. (3 Vol. 2 P. 1598, 9.)*

In the Proceedings upon an Impeachment by the Commons, a Member attends with others at the Bar of the Lords, there, in the Name of all the Commons of England, impeaches such an one, and acquaints the House, that the

(L. 17.)
What Number of Peers shall be required.
Vide Dignity, (F. 1, 2.)

(L. 18.)
Upon an Impeachment.
Process against him.

(L. 19.)
In what Manner impeached.

(L. 20.)
In what Form.

Commons, in due Time, will exhibit particular Articles against him, and maintain them. *Lords Journ.* 1, 15 *Ap.* 1701.

Tho' the Commons impeach only for a particular Grievance, they may afterwards exhibit other Articles against him. *Seld. Jud. Parl.* 21. (3 *Vol.* 2 *P.* 1595.)

And the Delivery of Articles is not necessary till the Party appears. *Seld. Jud. Parl.* 23. (3 *Vol.* 2 *P.* 1596.)

Except where the Commons will file them upon Record before. *Seld. Jud. Parl.* 24. (3 *Vol.* 2 *P.* 1596.)

(L. 21.)
Articles of
Impeach-
ment.

If Articles are not exhibited against the Lord impeached, the Lords by Message remind the Commons of it. *Lords Journ.* 5 *May* 1701. 15 *May* 1701. 4 *June* 1701.

But the Commons are Judges of the proper Time for exhibiting them. 31 *May* 1701. Yet the Lords claimed a Power to limit the Time. 4 *June* 1701.

When the Articles are prepared, a Member carries them to the Lords. 9 *May* 1701. *Lords Journ.*

But they are not read by the Commons at the Bar. *Lords Journ.* 9 *May* 1701.

Articles of Impeachment need not pursue the strict Forms of Law. *Seld. Jud. Parl.* 22, 27. (3 *Vol.* 2 *P.* 1595, 7.)

After the Articles are read, a Copy of them is prayed, and awarded to the Lord impeached. *Lords Journ.* 9, 24. *Ray.* 382.

And a Day given to him to answer. *Ray.* 382.

(L. 22.)
When com-
mitted upon
Articles, or
not.

In an Impeachment for a Misdemeanor, the Lord impeached does not find Security. *Lords Journ.* 9 *May* 1701. *Seld. Jud. Parl.* 101. (3 *Vol.* 2 *P.* 1624.)

Nor shall he be committed upon Common Fame, without a special Matter against him. *Seld. Jud. Parl.* 29. (3 *Vol.* 2 *P.* 1598.)

Nor shall he be committed, whether he be a Peer, or a Commoner, till Judgment against him. *Seld. Jud. Parl.* 98. (3 *Vol.* 2 *P.* 1624.)

So a Peer may continue in his Place, except upon Debate of his own Cause, till Judgment. *Seld. Jud. Parl.* 98, 101. (3 *Vol.* 2 *P.* 1624, 5.)

But where an Impeachment is for a Capital Offence, he shall be committed to Custody. *Seld. Jud. Parl.* 97. (3 *Vol.* 2 *P.* 1624.)

Yet, the Commitment will sometimes be omitted, at the Discretion of the Lords. *Ray.* 382.

And where an Impeachment is for High Treason, generally, without special Matter, it is usually omitted. It was omitted in the Case of Lord Clarendon, tho' the Commons complained of it. *Life of Clar.* 251 *ad* 302.

So, if a Commoner be impeached for a Misdemeanor, upon his Answer he may be required to find Surety for his Attendance. *Seld. Jud. Parl.* 98. (3 *Vol.* 2 *P.* 1624.)

And he may be committed for his Refusal, or till Bail. *Ibid.*

So, if he be in Custody before Impeachment, he shall answer there. *Seld. Jud. Parl.* 101. (3 *Vol.* 2 *P.* 1625.)

So, if committed for Treason, he may be bailed by the Lords, with the King's Licence. *Semb. Life of Clar.* 253, 257.

(L. 23.)
Answer.

After Answer by a Lord impeached, a Copy of it is made, and sent to the Commons. *Lords Journ.* 14, 24.

Then the Lord impeached may petition for Counsel, *Lords Journ.* 3 *Jan.* 1680.

And for his Trial.

The Answer does not observe any strict Form. *Rush.* 274.

He may submit himself to the King's Mercy. *Seld.* 3 *Vol.* 2 *P.* 1491.

Or plead *Not guilty* to the Whole.

Or, an Act of Pardon as to one Article, and *Not Guilty* to the Residue. 3 *Rush.*

1374.

After Answer, the Commons join Issue by Replication. 23 May 1701.

And may consider, whether they will reply or not. *Seld. Jud. Parl.* 199. (L. 24.)
 (3 Vol. 2 P. 1628.) Replication, &c.

If the Commons delay a Replication, the Lords remind them of it. 21 May 1701.

But upon an Information *Ex parte Domini Regis*, the Commons cannot reply, or demand that the Defendant shall be put to his Answer. *Seld. Jud. Parl.* 109, 118. (3 Vol. 2 P. 1628, 1631.)

So upon an Impeachment, if the Commons do not reply, the Lords may. *Seld. Jur. Parl.* 109. (3 Vol. 2 P. 1628.)

So to the Replication, the Defendant may rejoin, &c.

After Issue joined in Capital Cases, sometimes a Committee has been appointed of both Houses, viz. Lords and Commons, to adjust the Preliminaries of the Trial.

Sometimes omitted.

And in the Case of a Misdemeanor, refused, tho' desired by the Commons. 6, 10, 17 June 1701.

The Witnesses are sworn in the House, and examined by a Committee upon Interrogatories agreed in the House, or at the Discretion of the Committee. (L. 25.)
Seld. Jud. Parl. 120. (3 Vol. 2 P. 1632.) Witnesses.

Or are examined *viva voce* at the Bar, upon the Trial. 16 June 1701.

If Witnesses are examined upon Interrogatories, the Party accused shall have a Copy of the Depositions *Pro* and *Con*, after Publication in convenient Time before the Hearing. *Rush.* 267.

If examined *viva voce*, the impeached Lord may cross-examine. 16 June 1701.

After Issue joined, a Day shall be appointed for the Trial of the impeached Lord. (L. 26.)
 Trial.

And the Lords claim a Power to appoint what Day they please, though the Commons insist, that there ought to be a previous Signification of their Assent. 4 & 9 June 1701.

And to do Justice, by the Acquittal, or Condemnation, of the Peer, in a reasonable Time. 20 June 1701.

At the Trial, the Articles shall be read, and then the Answer, and then the Evidence. 16 June 1701.

A Lord, being a Witness, shall be sworn by the Chancellor at the Table, and shall give his Evidence in his Place. *Ibid.*

A Commoner shall be sworn by the Clerk, at the Bar, and there shall give his Evidence. *Ibid.*

The Commons ought to be present before the Peers; and none shall be covered but a Peer. *Ibid.*

If a Peer, or Manager for the Commons, would have any Question, he ought to pray that the Chancellor ask it. *Ibid.*

If a Doubt arises at the Trial, no Debate shall be in Court; but it shall be adjourned to the House. *Ibid.*

If several are impeached, the Commons may proceed as they please: And therefore, they may try which they will first. 4 & 9 June 1701.

No Peer, impeached for a Misdemeanor, ought to be without the Bar. R. 12 June 1701.

Nor shall be precluded of his Vote in any Case, except his own Trial. 12 June 1701.

A Peer shall have Counsel in a Cause Criminal, or Capital. R. *Rush.* 268. (L. 27.)
 In all Cases of Misdemeanor. *Seld. Jud. Parl.* 103, &c. (3 Vol. 2 P. 1625, 6, &c.) When Counsel, &c. allowed,

And the Counsel assigned has been imprisoned for Refusal. 1 *Clar.* 379.

So the Defendant, in a Case of Misdemeanor, shall have a Copy of the Articles. *Semb. Seld. Jud. Parl.* 107. (3 Vol. 2 P. 1627.)

But

But in an Impeachment for Treason, or Felony, Counsel has not been allowed. *Seld. Jud. Parl.* 102, &c. (3 Vol. 2 P. 1625, 6, &c.)

Yet in these Cases Counsel may be allowed, at the Discretion of the Lords. *Ray.* 382.

[By Stat. 20 G. 2. c. 30. All Persons impeached of High-treason, whereby Corruption of Blood, or for Misprision of it, shall make their full Defence by two Counsel.]

(L. 28.)
Causes of Im-
peachment.
For Treason.

The Duke of *Suffolk* was impeached for High Treason 28 H. 6. *Vide Art.* 1, 2, 3. *Seld. Jud. Parl.* 27. (3 Vol. 2 P. 1597.)

For High Treason in subverting the Fundamental Laws, and introducing Arbitrary Power, Lord *Finch*, Sir *Robert Berkely*, Lord *Strafford*. 2 *Rush.* 606. 3 *Rush.* 1365. (*Vid Rush. Part 3. Vol. 1. 136.*)

(L. 29)
For Neglect
of Office.
As an Am-
bassador.

The Duke of *Suffolk* was impeached 28 H. 6. for that, being Ambassador, he consented to the Delivery of divers Towns, to the King of *France*, without the Privity of the other Ambassadors. *Vide Art.* 4. (*Vide Seld. 3 Vol. 2 P. 1597.*)

The Earl of *Bristol*, That he, being Ambassador, gave false Informations to the King. 1 *Rush.* 249.

That he did not pursue his Instructions. *Art.* 2. 1 *Rush.* 250.

That he pursued his Embassy for his own Profit only. *Art.* 4. 1 *Rush.* 250.

Cardinal *Wolfey*, That he made a Treaty between the Pope and the King of *France*, when Ambassador to H. 8. without the Privity of his King. 4 *Inst.* 89, 156.

That he joined himself with the King. 4 *Inst.* 90.

(L. 30.)
Privy-Coun-
sellor.

The Earl of *Bristol* was impeached 2 Car. That he counselled against a War with *Spain*, when that King affronted Us, to the Dishonour and Detriment of the Realm. *Art.* 3. 1 *Rush.* 250.

That he advised a Toleration of Papists. 1 *Rush.* 251.

That he enticed the King to Popery. 1 *Rush.* 252, 262.

Michael De la Poole was impeached 10 R. 2. That he incited the King, to act against the Advice of Parliament. *Seld. Jud. Parl.* 25. (3 Vol. 2 P. 1596.)

The *Spencers*, That they gave bad Counsel to the King. 4 *Inst.* 54.

The Earl of *Orford*, That he advised a Prejudicial Peace. 8 May 1701.

Ld. *Finch*, That he, being Speaker of the Commons, refused proceeding in the House.

(L. 31.)
Admiral.

The Duke of *Buckingham* was impeached, for that he, being Admiral, neglected the Safeguard of the Sea. *Rush.* 308.

The Earl of *Orford*, That he hazarded the Navy, and had neglected to take Ships of the Enemy. 8 May 1701.

(L. 32.)
Chancellor.

Michael De la Poole was impeached, That he, being Chancellor, acted contrary to his Duty. *Seld. Jud. Parl.* 26. (3 Vol. 2 P. 1596.)

Lord *Somers*, That he ratified a Peace, not approved by the Parties concerned, under the Great Seal. 16 May 1701.

That he put the Great Seal without Warrant. *Ibid.*

And to a Blank Commission. *Ibid.*

That he made unlawful and irregular Decrees, and Orders, and a Delay of Justice. *Ibid.*

Michael De la Poole was impeached, That he purchased Lands of the King, which he had procured to be surveyed under their Value. *Seld. Jud. Parl.* 24. (3 Vol. 2 P. 1596.)

For a fraudulent Purchase from the King. *Seld. Jud. Parl.* 26. (3 Vol. 2 P. 1596.)

So, John Lord *Somers*. 16 May 1701.

The D. of *Buckingham* was impeached for Plurality of Offices, 2 *Car. Rush.* (L. 33.)
 306. For purchasing of Offices. *Rush.* 306, 334. For purchas-
 The Earl of *Orford*, for exercising incompatible Offices. 8 May 1701. ing, or hav-
 So, the Lord *Halifax*. 9 June 1701. ing a Plurality
 of Offices.

The D. of *Buckingham* was impeached for giving a Medicine to the King, (L. 34.)
 without Advice of the Physicians. *Rush.* 351. For Male-
 So the *Spencers*, Father and Son, were impeached, for that they prevented the (L. 35.)
 Great Men of the Realm from giving their Counsel to the King, except in their To the pub-
 Presence. 4 *Inst.* 53. lick Good.

That they put good Magistrates out of Office, and advanced bad. *Ibid.*
 The Earl of *Orford* was impeached, That he encouraged Pirates. 8 May 1701.

Sir G. *Mompesson* was impeached for the Procurement of Patents of Monopoly. (L. 36.)
 18 *Jac. Rush.* 24, 27. *Seld. Jud. Parl.* 31. (3 *Vol.* 2 P. 1598.) For Procure-
 ment of illegal
 Patents.

Lord *Bacon*, Chancellor, was impeached for Bribery. 18 *Jac. Rush.* 28. (L. 37.)
Seld. Jud. Parl. 31. (3 *Vol.* 2 P. 1599.) For Corrup-
 tion in Office

The D. of *Buckingham*, for the Sale and Purchase of Offices. *Rush.* 334.
 The Lord *Finch*, for unlawful Methods of enlarging the Forest, when Assistant
 to the Justices in *Eyre*. *Art.* 3. (*Vide Rush. Part 3. Vol.* 1. 137.)
 For threatening other Judges to subscribe to his Opinion. *Art.* 4, 5, 6. (*Vide*
Rush. Part 3. Vol. 1. 137.)

For delivering Opinions, which he knew to be contrary to Law. *Art.* 7.
 (*Vide Rush. Part 3. Vol.* 1. 137.)

For drawing the Business of the Court to his Chamber. *Art.* 8. (*Vide Rush.*
Part 3. Vol. 1. 138.)

So an Impeachment was exhibited for several Extortions and Deceits to the (L. 38.)
 Publick. *Seld. Jud. Parl.* 19. (3 *Vol.* 2 P. 1594, 5.) For Oppres-
 sion, or
 Deceit.

An Article was exhibited against Cardinal *Wolsey*, for exercising Legatine
 Authority, to the Prejudice of the Prerogative, and Oppression of Ordinaries,
 and Houses of Religion. 4 *Inst.* 89.

So, against the Earl of *Orford* for converting the Publick Money to his own
 Use, without Account. 8 May 1701.

So an Impeachment was against the Earl of *Orford*, That he procured from the (L. 39.)
 King, to himself, exorbitant Grants in Lands and Money. 8 May 1701.—So, For Regard
 against *Ld. Somers.* 16 May 1701. to Private
 Interest.

For taking Money, &c. from a foreign Prince, without giving an Account for
 it. 8 May 1701.

For selling Goods, taken as Admiral, for his own Use, without accounting
 for a Tenth to others. 8 May 1701.

Lord *Halifax*, for obtaining Grants of Estates forfeited for Rebellion. 9
 June 1701.

For obtaining Grants of Money, when there was a War and heavy Taxes.
Ibid.

And Grants out of the King's Woods. *Ibid.*

In a Prosecution by the Commons upon an Impeachment, &c. it belongs to (L. 40.)
 the Commons to demand the Judgment. *Seld. Jud. Parl.* 132, 133, 162, 176. Judgment
 upon an Im-
 peachment.
 By whom it
 shall be de-
 manded.

And they ought to be present at the Answer, or Judgment given. *Seld. Jud.*
Parl. 158. (3 *Vol.* 2 P. 1647.)

And this always upon a Judgment in Capital Cases, tho' it be not upon their
 Accusation. *Semb. Seld. Jud. Parl.* 158. (3 *Vol.* 2 P. 1647.)

So Judgment upon an Information shall be demanded by the King's Counsel. *Seld. Jud. Parl.* 176. (3 Vol. 2 P. 1653.)

But upon a Judgment by the Lords for a Misdemeanor, the Commons need not be present, unless it be upon their Impeachment. *Seld. Jud. Parl.* 162. (3 Vol. 2 P. 1649.)

(L. 41.)
By whom
given.

Judgment upon an Accusation in Parliament belongs to the Lords only. *Seld. Jud. Parl.* 133. (3 Vol. 2 P. 1637.) *Hard.* 155.

And it is sufficient, that a Majority of the Lords be present, in Person, or by Proxy. *Seld. Jud. Parl.* 144. (3 Vol. 2 P. 1641.)

In Cases of Misdemeanor, the Judgment shall be by the Lords Spiritual, as well as Temporal. *Seld. Jud. Parl.* 136, 148. (3 Vol. 2 P. 1638, 1643.)

And after Debate between them, the Chancellor, &c. puts the Question to the Youngest Baron, and so to each *seriatim*, who answers *Content*, or *Not Content*. *Seld. Jud. Parl.* 167. (3 Vol. 2 P. 1650.) *Vide Dignity*, (F. 2.)

Judgment in Capital Cases shall be pronounced by the High Steward. *Seld. Jud. Parl.* 177. (3 Vol. 2 P. 1653.) *Vide Dignity*, (F. 2.)

In Cases of Misdemeanor, by the Chancellor. *Seld. Jud. Parl.* 177. (3 Vol. 2 P. 1654.)

But in Capital Cases, the Lords Temporal only are Judges. *Seld. Jud. Parl.* 136, 149, &c. (3 Vol. 2 P. 1638, 1643.)

And the Lords Spiritual cannot vote in any Matter relating to it. *Seld. Jud. Parl.* 150, &c. (3 Vol. 2 P. 1643, 4, &c.)

And usually absent themselves from the House, when a Capital Offence is prosecuted and debated before the Parliament. *Seld. Jud. Parl.* 150. (3 Vol. 2 P. 1643, 4, 5, 6.)

Yet their Absence from the House is not necessary. *Semb. Seld. Jud. Parl.* 153. (3 Vol. 2 P. 1646.)

[Lords Spiritual may vote in all previous Questions, in a Proceeding in full Parliament in a Case of Blood. *Lords Journal*, 13 & 14 May 1672. *Foster* 248.]

[Lords Spiritual never were or could be summoned on a Court of the High-Steward; for there, in all Points of Law or Practice, he giveth the Rule, as sole Judge in the Court. *Foster* 248]

[The *Stat. 7 W. 3. c. 3.* does not give the Lords Spiritual any Right in Cases of Blood, which they had not before. *Ibid.*]

And a Bishop may officiate as Speaker of the Lords during the Trial, &c. *Seld. Jud. Parl.* 156. (3 Vol. 2 P. 1646.)

So the Judges ought to be present upon all Trials for Capital Offences, for their Advice. *Seld. Jud. Parl.* 164. (3 Vol. 2 P. 1649.) *Vide Ante*, (D. 18.)

(L. 42.)
The King's
Assent, when
necessary.

So to the Judgment of the Lords, in Capital Cases, the King's Assent is requisite. *Seld. Jud. Parl.* 136, 138, &c. (3 Vol. 2 P. 1486, 1638, 9, &c.)

But the King's Assent is sufficient, tho' the King be absent, if he signifies his Assent. *Seld. Jud. Parl.* 143. (3 Vol. 2 P. 1641.)

Tho' the King be absent at the Trial, Debate, &c. *Seld. Jud. Parl.* 146. (3 Vol. 2 P. 1642.)

So in Judgment for a Misdemeanor, the King's Assent is not necessary. *Seld. Jud. Parl.* 144. (3 Vol. 2 P. 1641.)

So it will be good, tho' the King dissents. *Semb. Seld. Jud. Parl.* 145. (3 Vol. 2 P. 1642.)

(L. 43.)
What the
Judgment
shall be.
In Capital
Cases.

The Judgment by the Lords in Capital Cases strictly pursues the Law of the Land. *Seld. Jud. Parl.* 168. (3 Vol. 2 P. 1650, 1.)

And cannot omit any Thing material. *Seld. Jud. Parl.* 169. (3 Vol. 2 P. 1651.)

Nor add any Thing to it. *Seld. Jud. Parl.* 170. (3 Vol. 2 P. 1651.)

But the Form of the Judgment for the same Offence at Common Law is not necessary. *Seld. Jud. Parl.* 169. (3 Vol. 2 P. 1651.)

And for Treason in surrendering of Castles, Judgment for Beheading only was given. *Seld. 3 Vol. 2 P. 1486.*

The Lords, for a Misdemeanor, have pronounced Sentence of perpetual Imprisonment. 18 *Jac. Rush. 28.* (L. 44.) Judgment by the Lords, upon an Impeachment for a Misdemeanor.

Imprisonment at the King's Pleasure. *Seld. Jud. Parl. 171. (3 Vol. 2 P. 1652.) 3 Inst. 148.*

Fine and Ransom; as Sir G. Mompeffon, 18 *Jac. Rush. 28.* Lord Bacon. *Rush. 31. Seld. Jud. Parl. 171. (3 Vol. 2 P. 1488, 1652.) 3 Inst. 148.*

Forfeiture of Goods and Land for Life, upon Sir G. Mompeffon. 18 *Jac. Rush. 28. Earl of Suffolk, Seld. 3 Vol. 2 P. 1518.*

Incapacity of Office, &c. upon Sir G. Mompeffon. 18 *Jac. Rush. 28. and Lord Bacon. Rush. 31. Seld. 3 Vol. 2 P. 1497. 3 Inst. 148.*

Incapacity to come near the King's Court, upon Sir G. Mompeffon. 18 *Jac. Rush. 28. 3 Inst. 148.*

That he be infamous, and may not be of a Jury, &c. upon Sir G. Mompeffon. 18 *Jac. Rush. 27.*

That he be degraded of Knighthood. Sir G. Mompeffon. 18 *Jac. Rush. 27.*

That he be not pardoned by the King. *Ibid.*

Perpetual Banishment. Sir G. Mompeffon. 18 *Jac. Rush. 28. Seld. 3 Vol. 2 P. 1505.*

That he make Satisfaction to the Party oppressed, &c. *Seld. Jud. Parl. 173. (3 Vol. 2 P. 1652.)*

That his fraudulent Purchase shall be annulled. *Seld. Jud. Parl. 174. (3 Vol. 2 P. 1653.)*

So, if he be a Peer, That he never shall take his Seat in Parliament. *Ld. Treasurer, M. 3 Inst. 148.*

After Judgment, in Capital Cases, it shall be commanded to the Earl Marshal to do Execution, and to the Mayor, Aldermen and Sheriffs of London, the Constable of the Tower, &c. to be assistant. *Seld. Jud. Parl. 182. (3 Vol. 2 P. 1659.)* (L. 45.) Execution.

If he be a Commoner, to the Marshal. *Seld. Jud. Parl. 183. (3 Vol. 2 P. 1659.)*

And it shall be in the Power of the King alone to order Execution to be done. Or the Lords may issue a Warrant for Execution.

So the King may remit all the Parts of the Judgment, except the Beheading. *Adm. 23 Dec. 1680.*

If Judgment against a Peer for a Misdemeanor be, That he be imprisoned, the Gentleman-Usher shall have Charge to conduct him to the Prison. *Seld. Jud. Parl. 185. (3 Vol. 2 P. 1660.)*

If, against a Commoner, the Serjeant at Arms attending the Great Seal. *Ibid.*

And it shall be commanded to the Constable of the Tower, &c. to receive the Body. *Ibid.*

If Judgment be for Damages, the Lords may appoint how they shall be levied. *Seld. Jud. Parl. 187. (3 Vol. 2 P. 1660.)*

If they do not appoint a Remedy, it shall be in Chancery, and not elsewhere. *Seld. Jud. Parl. 187. (3 Vol. 2 P. 1660.)*

By the *St. 12 & 13 W. 3. 2.* No Pardon under the Great Seal shall be pleadable to an Impeachment by the Commons in Parliament. *Vide Post, (L. 46.)*

If the Offence for which he is impeached be pardoned by an Act of Pardon, the Pardon may be pleaded before the Lords. *Sho. 100.* (L. 46.) When a Person impeached shall be discharged. By Pardon.

And it ought to be there pleaded: For if he be sent to B. R. by *Habeas Corpus*, the Court will not take Consuance of it, when the Commitment was judicially by the Lords. *R. Sho. 100. Carth. 132.*

Tho' the Parliament be adjourned, or prorogued. *Vide Carth. 132. Sho. 100.*

But by the *St. 12 & 13 W. 3. 2.* No Pardon under the Great Seal is pleadable to an Impeachment by Parliament.

Nor, before this Statute. *Dub. Hard. 155.*

If

If an Attainder be by the Common Law, for High Treason, by the *St.* 33 *H.* 8. 20. it shall be of the same Effect and Advantage to the King, as if it was an Attainder by Act of Parliament.

And by the *St.* 29 *El.* 2. an Attainder for High Treason, where the Party is executed, shall not be reversed for Error.

If the Attainder be confirmed by Parliament, a Petition for Mercy ought to be exhibited to the Parliament. *H. Parl.* 19.

(L. 47.) Recognizance taken by Parliament.

So the Parliament has Authority to take a Recognizance *sedente Parlamento.* *H.* 7. 20. *a.*

(L. 48.) Where the Lords have no original Jurisdiction.

But the Lords in Parliament have no original Jurisdiction of any Matter mixt with Fact: For it ought to come to them *gradatim*, for they are the last Resort. *Sal.* 511.

And therefore, they cannot determine originally the Right to Goods, or Inheritance. *Sal.* 512.

Vide Ante, (K.)

(M) Continuance of Parliament.

IF the King will not have the Parliament begin at the Return of the Writ of Summons, it may be continued by Writ till another Day. *1 And.* 295. *Vide Ante, (E. 1.)—Post, (N.—O. 1, 2.—P. 1, 2.)*

(N) Adjournment of Parliament.

THE House of Commons is a distinct Court, and is not adjourned by the Adjournment of the Upper House. *4 Inst.* 28.

And this House, by the Speaker, with the Assent of the House, adjourns itself. *4 Inst.* 22. *H. Parl.* 39.

The King claimed the sole Power to adjourn the Parliament. *18 Jac. Rusb.* 35. *But it was disallowed by the Commons. 4 Car. Rusb.* 537.

But the King, by Letters Patent, may adjourn the Parliament after the Session begun, as well as the House itself: And by such Adjournment all Matters continue undetermined. *D'Ew.* 318, 345.

And so it was 27 *El.* *Vide the Form of the Letters Patent, D'Ew.* 318.

And such Adjournment may be by Commissioners, as it was 28 & 29 *El.* *D'Ew.* 382. *4 Inst.* 7.

Or, by the King in Person. *D'Ew.* 551.

So the King, by the Speaker, commanded, that the House be adjourned to a subsequent Day. *1 Rusb.* 608.

Yet, an Adjournment of the Upper House by the Chancellor, with the Command and in the Presence of the King, is not an Adjournment of the House of Commons. *D'Ew.* 550, 621.

Or, by the King himself. *D'Ew.* 551.

A fortiori, if by the Chancellor, without the special Command of the King. *Ibid.*

So the Speaker ought not to adjourn the House by the King's Command, without the Assent of the House. *R.* 16 *Car.* 3 *Rusb.* 1137.

(O) Prorogation.

(O. 1.) Of what Effect it shall be.

NONE can prorogue the Parliament but the King. *Co. L. 110. a.*

The Prorogation makes a Session of Parliament. *4 Inst. 27.*

And all Bills, which had not the Royal Assent, begin *de novo* at the next Meeting of Parliament. *4 Inst. 27. H. Parl. 38.*

So all Orders, and every Thing before them, determine, except a *Scire facias*, and a Writ of Error. *Per Cur. 17 Car. 2. 1 Lev. 165.*

So a Writ of Error shall be discontinued by a Prorogation. *1 Vent. 31. 1 Sid. 413. Vide Post, (P. 2.)*

And if a new Writ of Error was taken teste'd the last Day of the Parliament, returnable at the Day to which it was prorogued, it was doubted, whether it was not discontinued by the Prorogation. *1 Vent. 31.*

But afterwards the Law was declared, and is now so taken, that a Writ of Error does not determine by a Prorogation of Parliament. *R. by the Lords in Parliament. 2 Lev. 93.*

(O. 2.) How prorogued.

The King may prorogue the Parliament.

And none but the King, in Person, or by Commission.

The Form of the Commission, *Vide D'Ew. 77, 94.*

But, tho' it be by Proclamation prorogued to a certain Day, it may afterwards, by Proclamation, be assembled in the mean Time. As, the Parliament 19 *Jac.* was adjourned to 8 *Feb.* and afterwards assembled 20 *Nov.* *Rush. 39.*

The Parliament, 19 *Car. 2.* was prorogued to 10 *Oct.* 1667, and afterwards summoned by Proclamation for the 25 *July* preceding, upon Account of a War with *Holland*: And because Peace was concluded, it was again put off to the 10 *Oct.* *1 Sid. 338.*

(P. 1.) Dissolution.

THE Parliament shall not be dissolved but by the King. *Co. L. 110. a. Hut. 62.*

The King shall be present at the Dissolution, in Person, or by Representation. *4 Inst. 28.*

As, if he dissolves it by Commission: As, 2 *Car. Rush. 399.*

The Form of the Commission, *Vide D'Ew. 275, 330, 390.*

But without the Command of the King in Person, signified by the Chancellor, &c. or by the King's Commission or Letters Patent, the Parliament cannot be dissolved. *D'Ew. 547.*

By the *St. 8 H. 5. 1.* The Parliament was not dissolved by the King's Return into the Kingdom, where it was summoned and held by the Guardian of the Kingdom. *4 Inst. 7.* Nor, by the *St. 4 Ann. 8. S. 22.* A Parliament called by the Lords Justices, by Arrival of the King or Queen into the Realm.

Nor, by the *St. 2 W. & M. 6.* by his Majesty's Voyage, or Absence out of the Realm.

Nor, by the *St. 7 & 8 W. 3. 15. 4 Ann. 8. & 6 Ann. 7. S. 4.* By the Death or Demise of the King, Queen, or her Successors; but shall continue to act (or, if prorogued, shall immediately convene and sit; or, if none in being, the last Parliament shall convene and sit) six Months, and no longer, unless sooner prorogued, or dissolved by such Successor.

When the Parliament is to be dissolved, the Commons are summoned to the Upper House, and then the Chancellor, by Command of the King, dissolves the Parliament. *4 Inst. 28.*

By the *St. 16 Car. 1. 7.* it was enacted, That the Parliament should not be dissolved, or adjourned, but by Act of Parliament.—And that Parliament was declared and enacted to be fully dissolved and determined*. So, by the *St.*

* [By the *St. 12 Car. 2. 1.*]

By *St. 6 W. & M. 2.* No Parliament shall have Continuance longer than three Years, from the Day on which, by the Writ of Summons, it is appointed to meet. Which by the *St. 6 Ann. 7. S. 7.* extends to the Parliament of Great Britain†.

† [By *St. 1. Geo. 1. St. 2.*

38. All Parliaments may have Continuance for seven Years, and no longer, to be accounted from the Day on which by the Writ of Summons such Parliament shall be appointed to meet, unless such Parliament shall be sooner dissolved by the King, his Heirs, or Successors.]

Every Parliament determined by the Death of the King.

Tho' there were a Statute which said, That it should not be dissolved without the Consent of both Houses, without express Words for the Continuance after the Death of the King. *R. 14 Car. 2. Kels. 14. †*

† [Vide the Statutes quoted above, which provide for this.]

(P. 2.) The Effect of a Dissolution.

When a Parliament is dissolved, Appeals, or Writs of Error, pending in Parliament, do not abate by the Dissolution; but the next Parliament shall proceed upon them in the State which they were in at the Dissolution, without beginning *de novo*. *Ray. 383.*

So an Impeachment by the Commons, is not altered by a Dissolution. *Ray. 383.*

For the Proceeding against the Party impeached may be in the next, or a subsequent Parliament. *Cartb. 132.*

And therefore, the Party impeached shall not be bailed in *B. R.* after the Dissolution. *Cont. in Ld. Danby's Case. (Vide Skin. 56, 162.) Acc. Cartb. 132.*

Yet, by a Dissolution, a Writ of Error is suspended: And therefore, a Defendant in Execution shall not be bailed upon the Recognizance given upon the Writ of Error in Parliament: For, if there should be a Dissolution before Judgment affirmed, the Party would be at large. *R. by all the Judges. 1 H. 7. 20. a. Vide Ante, (O. 1.)*

And the Writ itself is determined: For there shall be another Writ of Error at the next Parliament. *R. 2 Cro. 342.*

And Execution shall be taken in *B. R.* upon the Judgment. *R. Ray. 5. R. Jan. 66.*

(Q) Session of Parliament; What shall be.

IF the Parliament meets, and passes any Statute, that makes a Session. 4 *Inst. 28.*

So, if Error be brought there, and Judgment in it, tho' no Statute passes, it is a Session. *As, 18 R. 2. 4 Inst. 28.*

But if no Judgment be given, nor Act passed, it shall be called a Convention, but not a Session. 4 *Inst. 28. R. Hut. 61. 2 Bul. 235, 237. 1 Vent. 22. H. Parl. 38.*

Tho' Orders are made, and Bills agreed on. *Hut. 61.*

Tho' Bills pass each House of Parliament, if there be not the Royal Assent, or Dissent. *R. 1 Rol. 29.*

If an Act continues to the next Parliament, and the Parliament begins, but is dissolved before any Session made, the Act is not determined. *Ibid.*

If an Act passes the Royal Assent, the Session does not conclude till a Prorogation. 4 *Inst. 27. Ha. Parl. 37.*

Or a Dissolution. *Ha. Parl. 37.*

And for avoiding Doubt in this Point, by the *St. 1 Car. 7.* it was enacted and declared, That the Assent of the King to that or other Acts, shall not deter-

min:

mine the Session. And the same Provision was by the *St. 12 Car. 2. 3 S. 7.* and by the *St. 22 and 23 Car. 2. 1. S. 9.*

And a Parliament may have several Sessions. *Hut. 61.*

Yet each Session, for several Purposes, shall be a several Parliament in Law. *4 Inst. 27.*

(R) Act of Parliament.

(R. 1.) Relates to the Beginning of the Session.

EVERY Act of Parliament relates to the first Day of the Session, if it be not otherwise provided by the Act itself. *4 Inst. 25. R. Pl. Com. 79. b. H. Parl. 35.*

And therefore, if an Act takes away the Benefit of Clergy for an Offence, the Felon shall not have his Clergy for an Offence, committed after the first Day of the Session, tho' committed before the Royal Assent given: *1 And. 295.*

(R. 2.) How long it shall have Continuance.

If an Act be to have Continuance for three Years, and from thence to the End of the next Session of Parliament, it shall continue to the End of a Session which begins after the three Years, tho' a Session within three Years continues several Months or Years after the three Years. *1 Vent. 22.*

(R. 3.) What shall be an Act of Parliament.

Every Act of Parliament ought to be enacted by the Assent of the King, Lords, *Vide Ante,* and Commons. *8 Co. 20. b, The Prince's Case. 4 Inst. 25. Pl. Com. 79. a. (G. 21.) Ha. Parl. 31.*

And therefore, if it appears to be passed without the Assent of the Commons, it shall be void. *Mo. 824.*

Or, without the Assent of the Lords, or, of the King. *Pl. Com. 79. a. Ha. Parl. 32. Vide Ante, (G. 10.)*

So, if it be by the Assent of the King, the Lords Spiritual only, and the Commons, it is but an Ordinance, and no Act of Parliament. *4 Inst. 25.*

Or, by the King, the Lords Temporal, and Commons. *Ibid.*

But it is not necessary, that any of the Lords Spiritual assent, if there be a Majority of the Lords assembled in Parliament. *Seld. 3 Vol. 2 P. 1528.*

So, if all the Spiritual Lords assent conditionally: For the Condition is void. *4 Inst. 35.*

Or, if the Spiritual Lords are absent. *3 Rush. 1344.*

So it is not material, that the Assent of the King, Lords, and Commons be particularly expressed: For, *per Assensum Parliamenti*, comprehends the Assent of all. *Jon. 104.*

So, if by the Roll it appears, that the Bill was sent to the Lords, by the Commons, with a Proviso annexed, and no Proviso is extant upon the Record, yet it shall be a good Statute. *Hob. 110.*

And if the Journal of Parliament be variant from the Record, it does not prejudice: For that is no Record. *Hob. 110, 111.*

So it is not material in what Form it is expressed: For it may be in the Form of a Charter. *Co. L. 98. 8 Co. 18, 19, The Prince's Case.*

Or, by Way of a Grant by the King in Parliament. *Co. L. 98.*

And therefore, if the King grants *per Consilium fidelium Subditorum*, and it has always had the Reputation of an Act of Parliament, it is sufficient. *8 Co. 20. a, The Prince's Case. Jon. 103.*

So, if the Act be penned, *De Concilio Prælatorum, Comitum, Baronum et aliorum de Regno nostro statuimus, &c.* (*Vide 8 Co. 20. a, The Prince's Case.*)

So, if it be certified as an Act of Parliament by the Chancellor, when *Nul tiel Record* is pleaded, and a *Certiorari* goes to him to certify; tho' the Royal Assent be not expressed. *3 Keb. 587.*

General Acts are always inrolled by the Clerk of the Parliament, and delivered to the *Chancery*; which Intolment in *Chancery* makes the original Record. *R. Hob. 109. Vide Ante, (G. 22.)*

But Private Acts are not inrolled without special-Suit; but the original Bill, with the Assent of the Lords and Commons and Royal Assent indorsed, and filed, and labelled with the other Bills to which the Great Seal is annexed, which remain with the Clerk of Parliament, is the original Record. *Hob. 109.*

(R. 4.) What not.

But Acts which passed in Parliament before Time of Memory, (which by the *St. W. 1. 38.* is limited to the Coronation of *R. 1.* who began his Reign 6 July, and was crowned 3 Sept. 1189,) are not pleadable as Statutes, or Acts of Parliament. *Hist. C. L. 3, 4, &c.*

And therefore, all Statutes before the Conquest, or in the Times of *W. 1. W. 2. H. 1. Steph. H. 2.* are incorporated and Part of the Common Law: But, if they should be found in Records or Histories, they ought not to be reputed as Acts of Parliament. *Hist. C. L. 3.*

So Acts which upon the Roll, or Record, appear to be passed, without the Assent of the Lords, or of the Commons, are not Statutes. *Hob. 111.*

(R. 5.) How it shall be determined, whether it be a Statute or not.

The Judges ought to take Notice of a General Law; and therefore, ought to determine whether it be a Statute, or not. *Co. L. 98. b. Hist. C. L. 16. 1 Lev. 296. Dy. 93.*

And therefore, a Man cannot plead to it, *Nul tiel Record. 8 Co. 28. a. The Prince's Case.*

So it shall not be proved by a Journal. *Hob. 110.*

Or alledged, that the Assent of the Commons was conditional. *Mo. 824.*

And therefore, if no Journal, or Record of it, be now extant; the Judges, by antient Pleas, common Allowance, &c. may determine, whether it be a Statute, or not. *Hist. C. L. 16, 20.*

To a Private Act, if it be not produced in an Exemplification under Seal, the Party may plead, *Nul tiel Record. Hist. C. L. 16. 8 Co. 28. b, The Prince's Case. Vide Ante, (G. 22.—R. 3.*

(R. 6.) What shall be a General Act.

All Acts which concern the King, who is the Head of the Common Wealth, are General Laws, of which the Judges will take Notice, without pleading. *R. 8 Co. 28. a, The Prince's Case. R. 4 Co. 13, 77. a.*

So, if they concern the Queen: for she is the King's Wife. *8 Co. 28. b, The Prince's Case.*

Or, the Prince: For he is the eldest Son of the King, and the Heir apparent to the Crown. *R. 8 Co. 28. b, The Prince's Case.*

And therefore, the *St. 2 R. 2. 5. de Scandalis Magnatum*, is a General Law; for it touches the Prelates, Nobles, and Great Officers, who are of the King's Counsel. *R. 4 Co. 13.*

So, the *St. 35 H. 8.* which concerns the Capacity of the Queen. *8 Co. 28. b. The Prince's Case. R. Pl. Com. 231. a.*

So, the *St. 11 Ed. 3.* which makes the Prince Duke of Cornwall. *8 Co. 28. b. The Prince's Case.*

So a Statute, which concerns the whole Spirituality, will be a General Law: As, the *St. 21 H. 8. 13. R. 4 Co. 76. a. 1 Brownl. 208.*

So, the *St. 13 El. 10. and 18 El. 11. 4 Co. 76. a. 120. b. 1 Brownl. 208.*

So a Statute, which concerns all Officers in general: As, the *St. W. 1. 26.* That no Sheriff, or other Minister, take Reward, &c. *4 Co. 76. a.*

So, a Statute, which concerns Trade in general. *4 Co. 76. b.*

So the *St. 1 Jac. 22.* which relates to Shoemakers, &c. is a General Law.
R. Lut. 1410.

So, the *St. 2 Pb. & M. 11.* which relates to Woollen Weavers, &c. for the Penalties are given to the King. *Skin. 429.*

So, a Statute, which concerns all the Lords generally: As, the *St. Marl. 3. 4 Co. 76. b.*

So, if it concerns all Persons generally, tho' it be but a special or particular Thing: As, a Statute which concerns Appeals or Affises, or other particular Action. *Ibid.*

Elegit, Attaint, &c. Ibid.

The *St. Mert. 6.* and *4 H. 7. 17.* concerning Wards. *Ibid.*

The *St. W. 2. * De Malefactoribus in Parcibus;* and *Charta de Foresta. 8 Co. * [Vide W. 1. c. 20.]*

The *St. 22 Ed. 4. 7.* and *35 H. 8. 17.* Of Woods in Forests, Chafes, &c.
R. 8 Co. 138. b.

(R. 7.) What shall be a Private Act.

But a Statute, which concerns only a particular Species or Thing, or Person, will be a private Act, of which the Judges will not take Notice, without pleading it: As, the *St. 18 El. 6.* touching the Colleges only in the Universities. *Eton and Winchester. 4 Co. 76. a.*

So, the *St. 1 El. 19.* which relates to Bishops only. *4 Co. 76. a. R. 5 Co. 2. a. 13 Ed. 4. 8. b.*

So, the *St. 23 H. 6. 10.* which relates to Sheriffs only. *4 Co. 76. b. Cont. per 2 Ch. J. 1 Lev. 86. Semb. cont. per Hale, 2 Lev. 103. Acc. per Mont. Pl. Com. 65. Dy. 119.*

So, a Statute, which relates to Licences by King *H. 6.* to Corporations. *R. 13 Ed. 4. 8. b.*

So, the *St. 1 W. & M. 18.* for Toleration of Dissenters. *R. 1 Sal. 168.*

So a Statute, which relates to a particular Place or Town, will be a Private Law, tho' it concerns all Persons: As, if it relates to such a Manor, Town, &c. *4 Co. 76. b. Skin. 350.*

Or, to divers particular Towns. *4 Co. 76. b.*

Or, to one, or divers particular Counties. *Ibid.*

So, in a General Act there may be a private Clause: As, in the *St. 3 Jac. 5.* The Clause, which gives the Benefices of Recusants in such particular Counties to the University, is a private Law. *R. 10 Co. 57. b.*

The Judges will not take Notice of a Private Act, unless it be pleaded.

Tho' it makes void all Proceedings to the contrary in such a Place. *R. Skin. 350, 407.*

(R. 8.) When the King shall be bound by an Act of Parliament.

If an Act speaks of the King *indefinite*, being named in his Politick Capacity, it extends to all his Successors. *R. 12 Co. 110. R. 6 Co. 27. a.*

So, to a Queen, if the Crown descends to a Female. *12 Co. 110.*

But, generally, the King shall not be restrained of a Liberty, or a Right which he had before, by the General Words of an Act of Parliament, if the King be not named in the Act. *Pl. Com. 240.*

Yet, if a Statute be intended to give a Remedy against a Wrong, the King, tho' not named, shall be bound by it: As, by the *St. 32 H. 8. 28.* to prevent a Discontinuance by the Husband of the Lands of his Wife during Coverture. *R. 2 Inst. 681.*

So, in all Statutes made against Wrong, to prevent Fraud, or the Decay of Religion, the King is bound. *R. 5 Co. 14. b.*

And therefore, the King shall be bound by the *St. W. 2. 1. de Donis. 5 Co. 14. b.*

So, by the *St. W. 2. 5.* against tortious Usurpations. *Ibid.*

[So the King, though not named, is bound by Acts for the Advancement of Religion, or of Learning, or providing for the Poor; as the Act 19 Car. for uniting Livings in Ireland. *Rex v. Archbishop Armagh*, P. 8 G. Str. 516.]

(R. 9.) Repeal of a Statute; What shall be.

An Act of Parliament may be repealed by the express Words of a subsequent Statute, or by Implication.

So, if a subsequent Statute contrary to a former, has negative Words, it shall be a Repeal of the former.

So, if a subsequent Statute enacts a Thing inconsistent with a former: As, the St. 1 & 2 Ph. & M. St. 2. 2. which says, *All Ecclesiastical Jurisdiction of Bishops, &c. shall be in the same Estate as to Process, &c. as it was Temp. H. 8.* repeals the St. 1 Ed. 6. 2. which says, *Process shall be in the King's Name, &c.* R. 12 Co. 8.

So, if the St. 1 Ed. 6. 2. be repealed by the St. 1 & 2 Ph. & M. St. 2. 2. and this is repealed by the St. 1 El. 1. as to all Particulars not expressed afterwards, and the St. 1 El. revives expressly the St. 25 H. 8. 20. which is contrary to the St. 1 Ed. 6. 2. The St. 1 Ed. 6. 2. continues repealed. R. 12 Co. 8.

So, if a subsequent Act be contrary to a former in Matter, it shall be a Repeal of the former, tho' the Words are affirmative: As, the St. 1 & 2 Ph. & M. 10. *That all Trials for Treason, &c. shall be according to the Common Law,* is a Repeal of the St. 33 H. 8. 23. *That any examined before the King's Counsel, who confesses Treason, &c. shall be tried in the County where the King pleases.* R. 11 Co. 63. a.

The St. 1 Ed. 6. 14. which takes away Chantries, is a Repeal of the St. W. 2. 41. which gives a *Cessavit de Cantar*: R. 11 Co. 63. a.

But a later Statute, General and Affirmative, does not abrogate a former which is Particular: As, the St. 5 El. 4. *That none use a Trade without being Apprentice,* does not take away 4 & 5 Ph. & M. 5. *That no Weaver use, &c.* R. 6 Co. 19. b.

So a subsequent Act, which may be reconciled with a former, shall not be a Repeal of it. R. 11 Co. 63, 64.

As, the St. 16 R. 2. 5. *That a Person attainted in a Premunire, shall forfeit all his Lands,* does not repeal the St. *de Donis*, as to Lands in Tail against the Issue in Tail. R. 11 Co. 63. b.

Tho' there are negative Words: As, the St. 1 & 2 Ph. & M. 10. *That All Trials shall be according to the Course of the Common Law, and not otherwise,* does not take away 35 H. 8. 2. for Trial of Treason beyond Sea. R. 11 Co. 63. a.

So an Act, which repeals a Statute by which another was repealed, will be a Revivor of the Statute which was repealed. R. 12 Co. 7.

So, tho' the Words are, *That no Statute not expressly mentioned shall be revived,* if thereby another Statute is revived which mentions it to be in Force: As, the St. 21 H. 8. 13. Of Pluralities, being mentioned to be in Force by the St. 25 H. 8. 21. which was revived by the St. 1 El. 1.; tho' it says that no Statute repealed by the 1 & 2 Ph. & M. St. 2. 2. shall be in Force, if it be not specially revived.

Yet if a Statute be repealed by several Acts, a Repeal of one Act, and not of all, does not revive the first Statute. R. 12 Co. 8.

(R. 10.) How a Statute shall be expounded.

(R. 10.)
According to
the Intent.
Vide Parols.
(A. 18.)

Every Statute ought to be construed according to the Intent of the Parliament: And therefore, if a Corporation be misnamed, if it appears that it was intended, it is sufficient. R. 10 Co. 57. b.

Where the St. 18 Ed. 1. 1. *Quia Emptores terrarum* says, Every one shall hold of the Lord Paramount *secundum quantitatem terræ*; this shall be construed according to the Value: For so was the Intent. Pl. Com. 10, 57. b.

Tho'

Tho' it be a Penal Statute. *Pl. Com.* 10. *Hard.* 208.

For every Statute ought to be expounded, not according to the Letter, but according to the Intent. *2 Rol.* 318. *Pl. Com.* 350, 363.

[If the enacting Words can take in the Mischief, they shall be extended for that Purpose, though the Preamble does not warrant it. *Basset v. Basset*, *M.* 1744. *3 Atkyns* 203.]

[In an inclosing Act, if the Lands to be inclosed are to be subject to the same Charges and Incumbrances as the Owner's former Lands were, it means Incumbrances on the Estate, (as Dower, &c.) and not the being subject to the Repair of a Church. *Moncafter v. Watson*, *P.* 3 *G.* 3. *3 B. M.* 1375.]

[The *Stat.* 22 *C.* 2. c. 11. which enacts that a certain Toll shall be paid for Wharfage and Cranage of Goods brought unto, shipped off, loaden or unloaden at *Brook's Wharf*, does not extend to such Goods as are not landed there, but put on board Lighters, while the Vessel is moored and fastened to the Wharf. *Stephen v. Coffer*, *T.* 3 *G.* 3. *3 B. M.* 1408.]

The Preamble is a good Means for collecting the Intent.

So the Ground and Cause of the making of a Statute explains the Intent. *Pl. Com.* 173, 204.

(R. 11.)
Expounded
by the Preamble.

So a Statute ought to be construed according to the Reason and Rule of the Common Law. *Pl. Com.* 10. b.

(R. 12.)
By the Rules
of the Common Law.

The *St. Marl.* 25. provides, that the Vill be not amerced by the Justices in Eyre, if a sufficient Jury appears; which was conformable to the Common Law, by which Jurors who make Default, tho' twenty-four are summoned, should not be amerced if twelve appear. *2 Inst.* 148.

After the *St. of Wast Gloc.* 5. which gives Wast against Tenant by Curtesy, or Dower, against whom it lay by the Common Law, it shall not be brought against their Assignee, tho' he be within the Words of the Statute; because it does not lie against their Assignee by the Common Law. *2 Inst.* 301.

So the Judges expound a Case within the Mischief and Cause of an Act, to be within the Statute, by Equity, tho' it be not within the Words. *Co. L.* 24. b. *Hard.* 208. *Vide Post*, (R. 15.)

(R. 13.)
When expounded by
Equity.
A Remedial
Statute.
To another
Conveyance.

As, if a Statute be Remedial, it shall be extended by Equity to other Cases within the same Mischief.

And therefore, where the *St. Marl.* 6. provides, That a Feoffment to the Heir, to defraud the Lord of Ward, &c. be void, it extends to a Grant, Fine, Recovery, Lease and Release, Confirmation, or other Conveyance. *2 Inst.* 110.

Where the *St. W.* 2. 1. prohibits, *Quod illi quibus tenementum fuit datum non habeant Potestatem alienandi*, the Heirs of the Donces, by Equity, are under the same Prohibition. *Pl. Com.* 13. b.

[On the Expiration of several insolvent Debtors Acts, and the Revival of them, the Court held equitably, "That the Prisoners should have another Term after the then first Term allowed them to lodge their Petitions." *Williams v. Rougbeedge*, *H.* 32 *G.* 2. *2 B. M.* 747.]

[*Stat.* 2 *G.* 2. c. 22. continued by 29 *G.* 2. c. 28. expired 1st June 1759. *Stat.* 32 *G.* 2. c. 28. commenced 15 June 1759; so there was a Chasm of fourteen Days. The Court declared, they would construe it equitably, and that Trinity Term 1759, ought to be considered as the Term in which such Prisoners (as had been precluded by the Expiration of the former Act from completing their Discharge under it) were charged in Execution, and therefore they had Michaelmas Term for the first Term next after their being charged in Execution. *Insolvent Debtor's Case*, *M.* 33 *G.* 2. *2 B. M.* 901.]

But a Prohibition by an inferior Conveyance, does not extend to a superior Way: As, the *St.* 31 *H.* 8. 13. which exempts from Tithes, *Lands, &c. which by Surrender, Dissolution, Forfeiture, &c. or other Means, come to the King*, does not extend to Lands, &c. which come to the King by a subsequent Act of Parliament. *2 Co.* 46. b.

So,

(R. 14.)
To other Per-
sons.

So, if a Statute makes the Securities given by the Sureties of the Farmers of the Excise, to be exempted out of the Act of Oblivion, *a fortiori* the Securities of the Farmers themselves shall be exempted. *R. Hard. 424.*

The *St. Marl. 6.* which gives Remedy to the Lord for his Ward against a Feoffee by Collusion, extends to the Heir, or Feoffee of the Feoffee, and all those who have a Conveyance from the Lord by Fine, or otherwise, by Collusion. *2 Inst. 112.*

But if a Statute begins with Inferior Persons, the general Words do not extend to Superior Persons: As, the *St. W. 2. 41. Si Abbates, Priores, Custodes Hospitalium, et aliarum Domorum Religiosarum,* does not extend to a Bishop. *Dy. 109. b. (Vide 2 Inst. 457.) Vide Post, (R. 26.)*

So the *St. 13 El. 10.* which restrains Leases by Colleges, Deans and Chapters, Parsons, Vicars, and others having spiritual Promotions, does not include Bishops. *2 Co. 46. b.*

(R. 15.)
To all Cases
within the
same Mis-
chief.

So, in all Cases within the same Mischief, the Case shall be construed within the Intent, tho' it be not within the Letter of the Statute. *Vide Ante, (R. 13.)*

As, the *St. Marl. 29.* which gives Remedy to the Successor *ad Bona Ecclesie repetenda*, extends to Trespass for cutting down Trees. *2 Inst. 152.*

(R. 16.)
But a Thing
out of the Mis-
chief, shall be
out of the Pur-
view, tho' within the Letter of the Statute.

So a Case, out of the Mischief intended to be remedied by a Statute, shall be construed to be out of the Purview, tho' it be within the Words of the Statute. *2 Inst. 386.*

(R. 17.)
So a Statute
extends to a
Provision
made by a
subsequent
Statute.

So a Statute shall be extended to Cases provided by a subsequent Statute: As, if Extensors value Goods too high upon the *St. Aston Burnel, 13 Ed. 1.* they shall take them at the same Price, as was provided by the *St. de Merc. 11 Ed. 1. Hard. 211.*

The *St. M. Ch. 9 H. 3. 9.* which says, *Omnes Barones de Quinque Portibus habeant omnes Libertates et Consuetudines suas,* shall be restrained to such Liberties as are not taken away by another Branch of the same Statute; and therefore they shall not hold *Placita Corona.* *2 Inst. 31.*

A Statute made in Affirmance of the Common Law extends to all future Times. *2 Inst. 236.*

(R. 18.)
And, for Ne-
cessity, shall
be expounded
contrary to
the Letter.

So, for Necessity, that there be not a Failure of Justice, a Statute shall be expounded contrary to the Words: As, the *St. M. Ch. 9 H. 3. 12.* which says, *Quod Assise non capiant nisi in suis Comitibus;* but an Assise of a Commote in the Marches of Wales shall be taken in the County of Gloucester, tho' it lies out of the County: For the Lord of the Marches shall not be a Judge in his own Case. *2 Inst. 25.*

So, the *St. of Mert. 3.* which gives a *Redisseisin*, to be tried by the first Jurors; it shall be tried by Others, where there was no first Jury. *2 Inst. 84.*

The *St. of Marl. 4.* which says, *Nullus ducet District extra Com,* does not extend to a Case, where the Manor is in another County. *2 Inst. 106.*

The *St. of Marl. 22.* says, *Nullus jurare faciat tenentes suos contra voluntates,* but they may be sworn to present Articles of a Court Baron. *2 Inst. 142.*

(R. 19.)
Tho' the Sta-
tute be Penal
in some Re-
spect.

So a Statute for Suppression of Wrong, or for Publick Good, shall be taken by Equity, tho' it be Penal against the Offenders. *Pl. Com. 82. a. 17. b.*

As the *St. of Gloc. 5.* which gives treble Damages, &c. in Waste against Tenant for Years, extends by Equity to a Tenant for half an Year. *Pl. Com. 178.*

The *St. W. 2. 11.* which gives Debt against a Gaoler for an Escape of one committed for Arrearages of an Account, extends to an Escape of any committed in Execution for Debt. *Pl. Com. 178. a. 35. b.*

So the *St. Gloc. 5.* which gives Remedy for Waste against a Lessee, extends to a Devisee for Life, or Years. *Pl. Com. 10. a.*

The *St. 1 Ed. 2. De frangentibus Prisonam,* says, *That a Felon who breaks Prison shall be guilty of Felony:* But it shall not be so, if the Prison was on Fire. *Pl. Com. 13. b.*

But

But a Penal Statute, generally, shall not be taken by Equity: And therefore, the Statute against Maintenance shall not be construed by Equity. *R. Pl. Com. 86. b.* (R. 20.) But, generally, a Penal Statute shall not be taken by Equity.

Nor a Statute, which gives a Penalty in an Attaint. *Pl. Com. 86. b.*

The *St. de Malefactoribus in Parcibus* does not extend to those in Forests. *Pl. Com. 124. a.*

So the general Words of a Penal Statute shall be restrained, for the Benefit of him against whom the Penalty is inflicted.

As, the *St. W. 2. 11.* That *the Body of an Accountant shall be committed, by the Auditors, to Gaol, without saying, at what Time*; but he cannot be committed by them, if it be not immediately upon the Account. *Pl. Com. 17. b.*

If a Statute for any Offence gives a Forfeiture of Body and Goods, it shall be restrained to the Liberty of his Body, and is not taken to be Capital. *R. Hob. 270.*

The *St. of Gloc. 1.* says, *Damages shall be recovered in Mortd'ancestor as in Affise*; but they shall not be recovered against an Occupier who is not Tenant to the Writ, tho' they shall be recovered against him in an Affise, when the Disseisor is insufficient. *2 Inst. 287.*

[The *Statute 7 G. Stat. 2. ff. 8.* enacts, that all Contracts for *South-Sea* Stock, or an Abstract signed by the Party shall be registered, or in Default to be void; and all such Entries shall express the Name of the Person for whose Use such Contract was made. Plaintiff and Defendant made a Contract, and Plaintiff registered the Contract *verbatim*, and under it, this is for my proper Use and Benefit, and signed it with his own Name; it was resolved to be well. *Wilkinson v. Myer, P. 10 G. 2 Ld. Raym. 1350. Str. 585.*]

So a Statute, made for the Benefit of the King, shall be construed most beneficially for him: As, the *St. 17 Ed. 2. de Præ. Regis*, which says, *that the King shall have the Ward of his Tenant seised in Fee*, extends to his Tenant seised in Tail. *Pl. Com. 11. a.* (R. 21.) The Words shall be taken beneficially for the King.

If a Statute says, That a Thing for the Publick Benefit may be done, it shall be construed that it must be done: As, the *St. 23 H. 6. 10.* says, *The Sheriff, &c. may bail*, he shall be bound to bail. (*Vide Sal. 609.*) *Vide Bail, (F. 10.)* (R. 22.) Words of Permission shall be Obligatory.

So where the *St. 14 Car. 2. 12.* says, *Churchwardens and Overseers, &c. may make Rates to reimburse the Constable*; an Indictment lies against them, if they refuse it. *R. Sal. 609.*

So Affirmative Words in an Act of Parliament do not take away the Common Law. *Pl. Com. 112. b.* (R. 23.) Affirmative Words do not take away the Common Law.

And therefore, where by the *St. 1 El. 2.* A Minister, who does not read the Common Prayer, shall lose the Profits of his Benefice for the first Offence, and being convicted, &c. for a second Offence, shall be deprived; yet he might be deprived by the High Commission erected by the Power of the Common Law for the first Offence, without a Conviction, &c. or the Methods directed by the Statute. *R. 5 Co. 5. b. De Jur. Eccl.*

So General Words do not take away a Particular Privilege, or Benefit: As, the *St. W. 2. 18.* which gives an *Elegit*, does not take away the Privilege an Infant has, that he shall not be sued during his Nonage, if an *Elegit* be against the Heir of a Conusor, being an Infant. *2 Inst. 395.*

So, where *Southwark* chose Scavengers by Custom, the *St. 14 Car. 2. 2.* which says, *Constable and Churchwardens, &c. shall meet in Easter-week, and choose*, does not take away a Custom to choose at the Leet. *Dub. 2 Mod. 41.* (R. 24.) Nor a former Custom.

So the *St. 23 El. 1.* which gives *20l. per Month* against a Recusant, does not take away the Penalty of *12d.* for every Sunday, given by *St. 1 El. 2. 11 Co. 63. b.* (R. 25.) Nor a former Statute.

But where Affirmative Words in Sense contain a Negative: As, where a new Ordinance is made, which directs the Form or Order of the Proceeding, it shall be otherwise. *Pl. Com.* 113.

(R. 26.)
Words, which
begin with
Inferior Per-
sons, do not
include Super-
rior.
Vide Ante,
(R. 14.)

A Statute, which begins with a Prohibition to Inferior Persons, does not extend to Persons of a Superior Degree: As, where by the *St. W.* 1. 3. *Fines or Amerciaments shall not be levied for Escapes by Sberiffs or others*, it does not extend to B. R. 2 *Inst.* 165, 166.

So, where an Act of Oblivion excepts Accounts by *Sberiffs, Bailiffs, or other Officers*; Accounts by Superior Officers, as Cofferer, &c. are not excepted. *R. Hard.* 442.

So the *St. Marlb.* 29. which gives Trespass to the Successor of an Abbot, Prior, or other Prelate of the Church, does not extend to a Bishop. 2 *Inst.* 151.

But where a Statute begins with Inferior Courts, and concludes, *Vel in aliis Curis*, this extends to Superior Courts; otherwise the Words, *Vel in aliis Curis*, are void. 2 *Inst.* 137.

As, the *St. Marlb.* 19. *Quod in Comitatu, Hundredo, Curia Baron, vel aliis Curis, the Tenant shall not be sworn to his Essoign*, extends to the Courts of Westminster. *Ibid.*

(R. 27.)
Repugnant
Words con-
trolled by the
Common
Law.

So where the Words of an Act of Parliament are against Common Right and Reason, Repugnant, or Impossible to be performed, they shall be controuled by the Common Law. 8 *Co.* 118. a. *Bonham.*

And therefore, where by the *St. W.* 2. 21. a Writ of *Cessavit* is given *Hæredi petenti super Hæred' petent'*, &c. the Heir shall not have a *Cessavit* for a *Cesser* in the Time of his Ancestor, and the Rent does not belong to him, and it would be against Right, and Reason, that he shall have an Action in such Case. 8 *Co.* 118. a. 2 *Inst.* 402.

So the *St. of Carlisle*, 35 *Ed.* 1. That in the Orders of the *Cistercians* and *Augustines*, the Common Seal shall be in the Custody of the Prior and four of the most discreet of the House, and that a Deed sealed when the Seal is not in such Custody, shall be void, is impossible and impertinent, and therefore it shall be void: For when the Abbot uses the Seal for sealing a Deed, it cannot be in their Custody, and it would be unreasonable that a Deed should be avoided by a bare Surmise. 8 *Co.* 118. a.

So a Saving in the *St.* 1 *Ed.* 6. of Chantries, &c. given to the King, to the Donor, of all Services, is void: For, by Law, the King cannot hold of any. 8 *Co.* 118. b.

If an Act of Parliament gives to the Lord of a Manor, the Conufance of all Pleas within his Manor, he shall not have Conufance where he himself is Party. *Ibid.*

(R. 28.)
The Exposi-
tion shall be
such that the
Statute be not
eluded.

But such Exposition of a Statute ought to be favoured, as hinders the Statute from being eluded. 2 *Rol.* 127.

Vide more concerning Parliament, in *Antient Demesne*, (F. 2.—I.—K.)—*Dignity*, (C. 5.)—*Franchises*, (F. 3.)—*Ireland*, (C.)—*Pleader*, (3 B. 6.)—*Scotland*, (D. 4.)—*War*, (B. 6, 7.)

P A R O L.

Parol Agreement.

Vide Chancery, (2 C. 3.)—*Parcener*, (C. 5, 8.)

Parol demurring.

Vide Infant, (D. 1, 2.)

PAROLS.

P A R O L S.

(A) How expounded.

(A. 1.) Obsolete Words.

WORDS in antient Grants shall be expounded according to the Usage, and Construction, at the Time of the Grant.

As, by the Word *Soke*, the Grantee may claim the Suit of his Tenants. *Bro. Quo Warranto* 2. *Kel.* 145. a. 2 *Rol.* 245.

By the Word *Sake*, Conusance of Pleas of his Tenants. *Bro. Quo W.* 2. Or, Amerciaments of his Tenants. *Kel.* 145.

By the Word *Murder*, Amerciaments of Murderers. *Bro. Quo W.* 2.

By the Word *Toll*, the Tallage of his Villeins. *Bro. Quo W.* 2. (*Vide Kel.* 145. a.)

By the Word *Them*, the Issues of his Villeins. *Kel.* 145. 2 *Rol.* 245. l. 51.

By a Grant of *Infangthief*, &c. the Trial of Felons taken within his Precinct. (*Vide Blo. Nom. in Verbo.*)

A Grant of *Outfangthief* imports the Trial of those of his Fee taken for Felony in another Precinct. *Ibid.*

(A. 2.) Terms of Art.

So Words used as Terms of Art ought to be observed. *Vide Garranty, (A.)—Indictment, (G. 1, &c.)*

(A. 3.) Ambiguous Words.

So ambiguous Words shall be expounded as near to the Intent of the Parties as may be: As, if an Obligation be for Payment of 100*l.* at the 10th *Jan. on three Months Warning*; it shall be paid afterwards upon three Months Notice, tho' it was not required at the 10th *Jan.* *Semb. Ray.* 61. *Vide Post, (A. 18.)* (A. 3.) Ought to be taken as near as may be to the Intent of the Parties.

If a Lease be to *A.* for Life, rendring Rent at *Michaelmas*, and after his Death, to his Executor till *Michaelmas*; the Executor shall have it for the whole Day of *Michaelmas*; otherwise, no Rent would be due. *Per Coke, 3 Leo.* 211.

If a Covenant be to make an Assurance of divers Lands, &c. it shall be construed of the Whole, or of Part, according to the Intent. *R. 1 And.* 57.

If a Term be devised to *A.* and if she dies before she accomplish her Years of *lawful Age*, to *B.*; if *A.* dies after 18, and before 21, *B.* shall have it: For, *lawful Age*, shall be understood the Age of 21 Years, except where it is spoken of a Ward in Socage. *R. 1 Ch. R.* 99.

If an Obligation be to pay at *Lady-day*, it shall be at the next which follows. *R. 3 Leo.* 7.

[If the Mayor is to be sworn before the major Part of the free Burgeses, and it is found he was elected by the Majority, and sworn in *presentia quamplurimorum liberum burgensium*, it is not good; for *quamplurimi* only signifies a good many. *Castel v. Carter, T. 11 G. 2. Str.* 1097. *Andr.* 119, 241.]

[If a Man settles Money (on Failure of Heirs-male of *A.*) to be equally divided between *B. C. D.* and *E.* or the *respective Issues of their Bodies*, in case they or any of them are dead at the Failure of *A.*'s Issue, Share and Share alike, viz. to each of them, or their *respective Children*, one fourth, provided if any are dead without Issue at the Failure of *A.*'s Issue, then to be equally divided among the Survivors or their *respective Children*, in case any of them also shall be dead leaving Issue of their Bodies; the Word *Children* shall be extended to mean Issue;

Issue; and if *B.* dies without Issue, and *C.* leaves Children alive, *D.* Children and Great-grand-children, and *E.* only Grand-children. the Descendants of each shall have a third, which shall be divided among them *per capita.* *Wyth v. Blackman, H. 1748. 1 Vezey 196.*

[If *A.* demises to *B.* for ninety-nine Years, if she so long live, and after her Death, if she dies within the said Term, or other Determination of said Term, the Remainder thereof to her Son *C.* for the Residue of said Term, with Penalty if *B.* or *C.* grind at another Mill, Heriot to be paid on the Death of *B.* or *C.*; covenant that both shall repair, and *A.* covenants that both shall enjoy; the Word Term shall be understood to mean the Time, (and so *C.* shall have it for the Residue of the ninety-nine Years) and not the Estate, whereby he would have nothing, as it would expire at *B.*'s Death. *Wright v. Cartwright, P. 30 G. 2. 1 B. M. 282.*

[A Turnpike-act directs the Road to and from the Town of *A.* to be repaired, the same Act describes Roads as from, to, and through other Towns; the Town of *A.* was paved lately before the Act, and is kept in Repair by the Inhabitants; the Act extends not to the Town of *A.* *Hammond v. Brewer, T. 30 & 31 G. 2. 1 B. M. 376.*

[A Devise to the Prisoners in the Marshalsea Prison in the Borough of Southwark, means not the King's Bench Prison, but the Prison of the Palace-court, which in common Parlance is called the Marshalsea Prison. *King's Bench Prisoners v. Marshalsea Prisoners, T. 33 & 34 G. 2. 2 B. M. 1037.*

(A. 4.)
Most strong
against the
Grantor, and
for the Gran-
tee.

So ambiguous Words shall be taken most strong against the Grantor, and most beneficial for the Grantee. *Pl. Com. 10. b.*

As, if a Lease be by *A.* at Will, rendring 6*l.* per Ann. and *A.* grants *cum-dem Redditum* to *B.* for his Life; *B.* shall have 6*l.* per Ann. tho' the Lease determines: For it shall be taken for, *such* Rent. *R. Cro. El. 241.*

(A. 5.) Words abbreviated.

If Words are written with an usual Abbreviation, Notice shall be taken of it: As; if a *Venire facias* be awarded *de Visu de B.* it shall be understood for, *Vicineto*, which is the usual Abbreviation, tho' it be written without a Dash. *2 Rol. 246. l. 15.*

(A. 6.) Synonymous.

So Words of the same Import may be used promiscuously: As, *quondam*, for, *nuper*, and *vice versa.* *R. Pl. Com. 190. b.*

[Indenture is always understood to be a Deed. *Dodd v. Atkinson, M. 19 G. 2. B. R. H. 342.*

[Friends is synonymous to Relations. *Gower v. Mainwaring, M. 1750. 2 Vezey 87.*

(A. 7.) Words, how explained.

The general Words in the Premises of a Deed or Grant, may be corrected, restrained and explained by the *Habendum*, or an Exception. *Hob. 169. De quo Vide Fait, (E. 5, &c. 9, 10.)*

Or, by a Condition annexed. *Hob. 169. De quo Vide Condition.*

Or, by the Context, or Recital of the Deed. *Vide Post, (A. 18, 19.)—Covenant, (D. 1.)*

Or, by synonymous Expressions, or Clauses. *Vide Post, (A. 16, 20.)—Covenant, (D. 1.)*

(A. 8.)
By a *Viz.* or
Scilicet.

So they may be explained by a *Viz.* or *Scilicet*, which is an ancillary Clause, that expresses particularly what was general or doubtful. *Hob. 172.*

As,

As, if a Man grant to *A.* and his Heirs, viz. *Heirs of his Body*, it shall be an Entail. *Hob. 172.*

But if it be repugnant to the precedent Words, it shall be void, and rejected:

As, if a Man grant an entire Rent out of *B.* and *W.* viz. *So much out of B. and so much out of W.* this does not make several Rents. *Ibid.*

So, if *A.* covenant to pay 83*l.* quarterly, viz. 20*l.* at Michaelmas, 21*l.* at Christmas, 20*l.* at Lady-day, and 21*l.* at Midsummer, which do not amount to 83*l.* and if the viz. be rejected, the Time of Payment does not appear; for it shall be understood at the usual Quarters by equal Portions. *R. 2 Lev. 99.*

So they cannot enlarge or diminish the precedent Matter granted: As, if a Man having three Acres in *D.* grant all his Land in *D.* viz. *B. Acre and W. Acre*, the third Acre also passes. *Hob. 172.*

So, if he grant all his Land in *D.* viz. *B.* and *P.* which lies out of *D.* that does not pass. *Ibid.*

If a Man grant all the Wood in his Manor of *D.* viz. *in B. Wood, and C. Wood*, this does not restrain the Grant in the Residue of the Manor. *R. Hob. 170.*

(A. 9.) Collective.

So *Nomen collectivum* shall be extended to all Persons comprized within the general Name; as, if a Man devise that his Heir shall have his Land as long as he pays such annual Payments, and if his Heir do not pay, that his Executor shall have the Land; this extends to all his Heirs successively. *R. 2 Rol. 253. l. 25, 35.*

So, if a Devise or Limitation be to *A.* for Life, and after his Death to the Heir of his Body; tho', Heir is a Name of Purchase, yet, being coupled with the Words, *of his Body*, it shall be taken as *Nomen collectivum*, and make an Estate Tail executed. *R. 2 Rol. 253. l. 40, 50.*

(A. 10.) Exclusive.

So a Release of all Demands, till such a Day, viz. 24th April, excludes the 24th April, and an Obligation made the 24th of April is not discharged. *R. 2 Mod. 280.*

(A. 11.) Copulative.

So Words shall be expounded *Conjunctim*, where they are with a Copulative: As, if *A.* leases for twenty Years, *if A. and B. so long live*; if one of them dies, the Lease determines. *R. 2 Cro. 378.*

So Words in the Disjunctive shall be taken *Copulative*, where the Intent requires it: As, if a Devise be after the Death of him and his Wife to the Issue living at the Death of him, his Wife, or the Survivor; the Issue does not take, tho' living at the Death of the Testator, if it was not living at the Death of the Wife: And therefore, *or*, shall be taken for, *and*, otherwise the Word *Survivor* is superfluous. *R. 2 Ver. 389.*

(A. 12.) Disjunctive.

So Words shall be construed disjunctively to answer the Intent of the Parties: As, if a Covenant be to make an Assurance by *A.* and *B.* & *eorum utrumque* devised; an Assurance, devised by them severally, ought to be executed. *R. 1 And. 55.*

If an Obligation be to pay, if a Ship, Goods, or the Obligor return safe; it shall be construed to pay, when any of them return safe, which first happens. *R. 1 Lev. 55.*

If a Covenant be, that a Lessee repair a House during the Term, or within three Months after upon Notice; they shall be construed distinct Covenants, and

the Lessor shall have Election to sue for not repairing during the Term, or to give Notice afterwards, and then sue, if he do not repair within three Months. *R. 2 Rol. 250.*

(A. 13.) Distributive.

So Words shall be expounded *distributive*, *reddendo Singula singulis*: As, if a Demise be to *A.* for ten, and of other Land to *B.* for twenty Years, and after the Determination of the several Leases, to *C.* He shall have the Land demised to *A.* immediately after his Lease determines, tho' the other Lease continues. *R. 5 Co. 7. b. Vide Estates, (B. 20.)*

If a Devise be of Legacies to a Woman and four Issues of her eldest Son, upon Condition, that if they do not release respectively, when they become of full Age all Right to his Estate, their Legacies shall be void; it shall be *distributive*, that the Legacy of each, who does not release, shall be void. *R. 2 Ver. 478.*

(A. 14.) Relative.

(A. 14.)
When referred
to the next
Antecedent.

Relative Words, generally, are referred to the next Antecedent, where the Intent upon the whole Deed does not appear to the contrary: As, if an Obligation be, *1 Apr. 2 El. to pay 21 Apr. next*; the Word relates to the Month, and not to the Day: For the Payment shall be, *21 Apr. 3 El.* *R. 2 Rol. 351. l. 30. But afterwards R. cont. there, l. 35. 2 Cro. 646, 677.*

If a Grant be of Land in the Parish of *B.* which has three Villis, *A. B. and C.* and of the Tithes in *A. and B. and of all Tenements in B. aforesaid*; this refers to the Parish of *B.* and the Tenements in *C.* pass. *R. 2 Rol. 251. l. 15.*

If *A.* be bound to pay *10l.* before *20 Oct.* (if *B.* be then living) and that he levy a Fine, &c. *that* he refers to *B.* who is last named, tho' in a *Parenthesis.* *R. 2 Rol. 252. l. 15.*

In *Assumpsit* brought in an inferior Court, if the Plaintiff declares that the Defendant, in Consideration of carrying the Goods of *B.* to *London*, *ad tunc et ibidem* assumed, &c.; *ibidem* refers to *London*, and so, the Undertaking being out of the Jurisdiction, it is bad. *R. 2 Rol. 252. l. 20.*

Covenant upon an Indenture, reciting other Indentures, *Cumque per unam aliam Indenturam, &c. testatum est per Indentur' præd'*, the Word, *præd'* relates to the last Indenture. *Semb. Sho. 72.*

If an Obligation be, *5th June*, with a Condition to pay on *1st Day of Trinity Term next*, which began the *7th June*, it ought to be paid the *7th* of the same *June*, tho' the Effoign-Day of *Trinity Term* was *3d June.* *R. Sav. 124.*

(A. 15.)
When not.

But where the Intent appears otherwise, the Reference shall be to support the Intent: As, if the King grant a Manor in the Parish of *R.* (which has in it three Villis, *R. A. and B.*) and all Tithes in *R. and A. and all his Lands in R. aforesaid*; this refers to the Parish of *R.* and not to the Vill, tho' it was the next Antecedent. *Dub. 2 Rol. 251. l. 15.*

So, if an Obligation, the *23 Apr.* be, to pay *24 Apr. next*, it shall be referred to the Month, or to the Day, as the Intent is found to be. *2 Rol. 251. l. 30, 35.*

Submission to an Award, *ita quod factum sit, on this Side the 8th of June, before four o'Clock of the same Day*; the Word, *Day*, does not refer to the *8th June*, but to the Day before, when the Award is made. *R. 2 Rol. 251. l. 50. Vide 3 Lev. 239.*

If a Writ be teste'd *1º Martii* (which was after *Lent* began) returnable in *quarta Septimana Quadragesimæ prox' futur'*, the Words, *prox' futur'*, relate to the fourth Week, and not to *Lent.* *R. Mo. 365. Popb. 100.*

If a Feoffment be to *B.* Senior to the Use of *B.* Junior for Life, and afterwards a Remainder is limited to the Heirs of the said *B.* he who was last named shall be understood. *Pol. 63.*

If

If a Condition be to pay, where *A.* dies before *Michaelmas* without Issue then living, it shall be referred to the Death, *Per 3 J. Dy. 15. a.*

If an Information *apud W. in Com. M.* says, *quod A. de B. in Com. S. apud W. in Com. M. implacitasset, &c.* it shall be referred to the County of *M.* 3 *Sal. 199.*

So indefinite Words are *tantamount* to universal, and refer to all the Particulars precedent: As, if a Man devise *A.* to his Wife, and *B.* to his Wife, and afterwards devise *the same Lands* to his Son; this refers to all the foregoing Lands, and not to those in *B.* only. *Semb. 1 Vent. 368.*

(A. 16.)
When the
Reference
shall be to all
the Words
precedent.
Vide Post,
(A. 20.)

So Words at the End of a Sentence, which may be applied to all the preceding, shall be restrictive and relative to all the preceding: As, if the King grant the Rectory of *L. cum Decimis spectan' ac omnes Terras & Tenementa in tenura B. sub annuali Redditu 3 l.* the last Words refer to the Rectory as well as all the Lands; and if they are not in the Tenure of *B.* at the same Rent, the Grant is void. *R. Per 3 J. 2 Cro. 34.*

So, if a Covenant be, that he is seised in Fee according to the Indenture of his Purchase; the Covenant is, that he is seised in Fee absolutely: For the Reference to the Indenture imports only the Certainty of the Estate, not the Title. *R. 1 Lev. 40.*

So, if there are distinct Clauses, restrictive or explanatory Words at the End of the last Clause do not refer to the preceding: As, a Grant of all Tithes *infra* *Dominicum de B. ac omnes alias Decimas Monasterio de B. spectan' quæ fuer' collect' per Ballivum ejusdem Monasterii;* Tithes, *infra Dominicum de B.* pass, tho' not collected by the Bailiff of the Abbey: For that refers only to all the other Tithes, which is a distinct Clause. *R. 2 Cro. 48. Mo. 754, 755.*

(A. 17.)
When not.

So a Grant of Lands in *A. aut alibi in Com. B. Monasterio de C. spectan'*, the Words, *Monasterio de C. spectan'*, refer only to Lands *alibi in Com. B.* *Per quosdam. 2 Cro. 51.*

The general Construction of Words ought to be for supporting the Intention of the Parties: And therefore, if a Devise be to his Daughter *A.* upon Condition, *that she marry D. and if she refuses, or marries another before her Age of twenty-one Years,* to *B.* his Daughter; *D.* dies, and *A.* afterwards marries another before her Age of twenty-one Years; the Estate does not go to *B.* for the Intent appears, that She shall not marry another to prevent her Marriage with *D.* but when this becomes impossible by the Act of God, her Marriage with another does not lose the Estate. *R. 4 Mod. 68.*

(A. 18.)
Words ex-
pounded ac-
cording to
the Intent of
the Parties.
With regard
to the Con-
text. *Vide*
Covenant, (D.
1.)—Parlia-
ment, (R. 10.)

A Promise in Consideration, *quod ulterius non prosequeretur B.* an Averment, *quod prosequi abstinuit & hucusque aliquantulum abstinet,* is sufficient: For, *aliquantulum,* in regard to the Context, imports *quod omnino abstinet.* *R. 2 Rol 246. l. 50.*

A Writ to the Escheator says, *quod tam Escheator quam Jurat' Sigilla sua alternatim appon'*; both ought to seal the same Return, and not the Escheator one, and the Jurors the other. *R. 2 Rol. 248. l. 10. Hob. 253.*

In a Lease of Land, except a Wood, the Lessor covenants that the Lessee shall take Firebote *super Præmissa;* he shall not take it in the Wood excepted. *R. 1 Leo. 117.*

If a Covenant be, that he hath not done nor will do any Act to disturb the Plaintiff, but that he will hold without any Disturbance; the last shall be taken with Reference to the former Words, and it is not a Breach if he be disturbed without his Act. *R. Mo. 58.*

If a Wager be, whether *K. W.* takes *Ireland* into his Power by his present or any other Title before 30 Dec. it shall be understood of his actual Administration; because, *by his present or other Title,* shews the Intent was not, such Administration as he then had. *R. Sho. 182.*

[If it is agreed, "That several Causes shall be bound by the Verdict given in one," it means *such a Verdict* as the Court thinks ought to stand; therefore if after

after Verdict a new Trial is granted, the others are not bound by the old Verdict. *Hodson v. Richardson*, P. 4 G. 3. 3 B. M. 1477.]

So Synony-
mous Cove-
nants.

Vide Covenant, (D. 2.)

(A. 19.)
With Regard
to a Recital.

So the Construction of a Deed shall be with Regard to a Recital: As, if a Lease be to *A.* except a Close; and *A.* covenants to make all Grants, Agreements, *contenta aut recitata*, &c. it will be a Breach if he disturbs the Lessor in the Close excepted. 1 *Leo*. 117.

But a Recital does not confine subsequent Words by which the Intent appears more large: As, if a Condition of an Obligation recites, *Whereas a Ship is bound to A. and is to return to the Port of B. or London, or any in England; the Obligor shall pay 20 l. after the next Return to the Port of B. or L. or other Port of England, or elsewhere where she makes her right Discharge*; if she makes a Discharge at *Venice*, he ought to pay. R. 2 *Rol.* 247. l. 30.

(A. 20.)
To a Restriction
annexed.
Vide Ante,
(A. 16.)

So, where restrictive Words are annexed at the End of several Expressions, all are restrained by it: As, if the King grant a Portion of Tithes in *L.* with all Tithes in *L.* in the Occupation of *B.*; the Portion, or other Tithes, do not pass, if they are not in the Occupation of *B.* R. 2 *Rol.* 193. l. 5.

So, if a Covenant be to assure such Land as descends to him, the same Land to be 40 l. *per Ann*; he need not assign more than 40 l. *per Ann.* tho' more descends. *Semb.* 3 *Leo*. 27.

(A. 21.)
Words shall
be transposed.
*Vide Abate-
ment*, (H.
11.)

So Words shall be transposed to support the Intent of the Parties: As, if a Lease be 6th *Aug.* for twenty Years, rendring Rent *annuatim* at *Lady-Day* and *Michaelmas*; there shall be a Transposition, to *Michaelmas* and *Lady-Day*; otherwise it cannot be paid *annuatim*. *Co. L.* 217. b. R. *per* 2 *J. Brown* cont. *Pl. Com.* 171.

A Devise to a Woman for Life if she does not marry, and if she marries, to *A.* in Tail, &c. shall be an Estate Tail tho' she does not marry: For it shall be taken that *A.* shall enter immediately if she marries. R. 3 *Lev.* 125.

A Devise to *A.* for Life, and afterwards to his first, second, and other Issues, Remainder to *B.* for preserving Estates; the Words shall be transposed to make the Devise to *B.* precedent to the Disposition to the Issues. R. 2 *Ca. Ch.* 10.

(A. 22.)
Insensible, re-
jected.

If a Lease be for forty Years, and the Lessor covenants that the Lessee shall enjoy *for the said Term of eighty Years*; the Words, *eighty Years*, being insensible, shall be rejected, and the Covenant shall be that he shall enjoy *for the said Term*. *Sav.* 71.

If a *Distingas* be returnable *Tres Trin. nisi* the Judge of Assise come 3, *ejusdem Mensis Junii*, where no such Month was mentioned before, *ejusdem*, shall be rejected. R. *Hard.* 330.

But if by the Rejection of insensible Words, no Sense remains, there the whole is void: As, if Accompt be for *septem ponderibus Cerae*, it is utterly insensible: For *pondus*, *ponderis*, is a Weight; *pondus*, *pondi*, a Pound. R. 2 *Rol.* 247. l. 15.

(A. 23.)
General, re-
strained.
Vide Ante,
(A. 20.)

So, always a Construction shall be made of Words, if it can, to support that which seems to be the Intent of the Parties: As, a Lease *pro Octoginta & terdecim Annis*, shall be construed for 93 Years, and not for 80 and 30. R. *Cro. Car.* 386. 2 *Rol.* 247. l. 5.

A Devise to *A.* for Life, with Power *six Months before his Death* to make a Lease for six Years: He may make a Lease at any Time before his Death, tho' it be not six Months before: for the Time of Death being uncertain, the Intent was, that he might make a Lease for six Years at any Time. R. 2 *Rol.* 247. l. 20.

A Lease by the King of a Manor and Profits of Courts (reciting a former Lease of the Manor) to begin after the former Lease, *reddendo inde extunc 78 l. annually*,

annually, viz. 36*l.* for the Manor, 6*l.* for the Profits, &c. The Rent commences upon the Commencement of each Lease: For, for the Profits not leased before, it commences immediately; for the Manor, after the former Lease. R. 2 Rol. 252. l. 5.

An Obligation, with a Condition to meet at *A.* there to choose Arbitrators, who, with Arbitrators of the Plaintiff, might determine all Matters between them; it is not sufficient to be there the last Minute of the Day: For, it ought to be understood, that he shall be there in Time to determine all Differences. R. Mo. 545.

If a Condition be, *Anno* 1648, to pay *when the King is restored*; it shall be understood of King Charles I. Per 2 J. 1 Sid. 314.

But where Words have no Ambiguity, an Exposition shall not be made against the exprefs Words.

So General Words are not restrained by Restrictive added in *majorem Cautelam*. As, if the King grant a Manor belonging to the Priory of *C.* and all Lands, Tenements and Hereditaments to the said Priory of *C.* appertaining, and all Liberties, Pischaries, &c. *eidem Manerio spectan'*; A Pischary, &c. in gross, appertaining to the Priory, passes: For, being comprehended in the Word *Hereditaments*, it shall not be excluded by the Words, *eidem Manerio spectan'*, which were added for greater Caution. R. 2 Rol. 186. l. 5.

So, if the King grant all Lands, &c. in *L.* and afterwards grant the Rectory of *L.* (where there were two Rectories) and all Lands, Tenements, and Hereditaments, &c. the Rectories pass by the General Words. 2 Rol. 193. l. 10.

So General Words are not restrained by Affirmative Words more Restrictive: As, if a Man grant to *A.* all the Wood in his Manor, and afterwards covenant that *A.* shall take all the Wood within five Years; he shall not be confined to five Years for taking the Wood. R. Hob. 173.

So a Grant of 5*l.* per Ann. to Husband and Wife for their Lives, and if the Wife survives, that she shall have 3*l.* per Ann.; if she survives, she shall have 5*l.* per Ann. Hob. 173.

A Covenant, that a Lessee shall take *Botes* by Assignment; he may take them without Assignment. Hob. 173.

For more concerning Words, and the Exposition of them, Vide Abatement, (H. 3, 11.)—Action upon the Case for Defamation, per Totum.—Chancery, (3 A. 8.—3 Y. 1, &c.)—Condition.—Covenant, (D. 1, 2.—G. 2.)—Devise, (N. 1, &c.)—Estates, (A. 2.—B. 3, 12, 19.)—Fait, (E. 5.)—Feoffment, (A. 3.)—Franchises, (F. 6.)—Garranty, (A.)—Grant, (E. 1, &c.)—Libel.—Obligation, (B. 1, &c.)—Pardon, (C.—D.)—Parliament, (R. 10, &c.)—Pleader, (C. 25, &c. 45, &c. 77.—V. 5.—2 L. 1, &c.)—Pojar, (A. 2.—B. 1, &c.)—Rent, (B. 2.)—Uses, (L. 3.)

P A R S O N.

(A) Parson, Who shall be.

A PARSON is he, *qui Personam gerit Ecclesiæ*. Co. L. 300. a. Vide Ecclesiastical Persons, (C. 6.)

Who may be, or not, and his Interest in the Rectory. Vide Ecclesiastical Persons, (C. 7, 8, 9.)

(B) **Must be** infra sacros Ordines.(B. 1.) *Qui sunt sacri Ordines.*

BY the St. 13 & 14 Car. 2. 4. No Person shall be capable of being admitted to any Parsonage, Vicarage, Benefice, &c. before he be ordained Priest, according to the Form thereby established, unless he have before Episcopal Ordination, on Pain of 100*l.* &c. And Disability to take the Order of Priest for a Year.

Sacri ordines, strictè loquendo, sunt 4 tantum, viz. Subdiaconatus, Diaconatus, Presbyteratus, & Episcopatus. Lind. 27. Verb. Sacros Ordines.

Et in Clausulâ pœnali, verba non debent extendi ad minores Ordines. Lind. 27. Verb. Sacros Ordines.

Large tamen loquendo, omnes Ordines, etiam Minores (viz. Cantores, Acolyti, Exorcistæ, & Ostiarii) dicuntur Sacri. Lind. 27. Verb. Sacros Ordines.

If a Man takes a Benefice, not having Episcopal Ordination, it shall be, *ipso facto*, void. 1 Mod. 11.

(B. 2.) What shall be a lawful Ordination.

By the St. 5 & 6 Ed. 6. 1. (which was repealed by the St. 1 M. 2. and afterwards revived by the St. 1 El. 2.) To the Book of Common Prayer, was added a Form of making and consecrating Archbishops, Bishops, Priests, and Deacons, to be of like Force and Authority as the said Book.

And by the St. 8 El. 1. The same Form shall be of Force, and shall be used and observed in all Places, &c.

By the St. 13 & 14 Car. 2. 4. The Book of Common Prayer, with the Form of Making, Ordaining, and Consecrating Bishops, Priests, and Deacons, is recommended by the King to the Parliament, to be used by all that make or consecrate Bishops, Priests and Deacons; and the same is established by that Act.

By the 36th Article of the 39 Articles established Anno 1562, it was declared, that the Book of Consecration of Archbishops and Bishops, and Ordaining Priests and Deacons set forth in the Time of K. Ed. 6. doth contain all Things necessary for such Consecration, and Ordaining, &c.

And by the St. 13 & 14 Car. 2. 4. S. 30, 31. it is enacted, That all Subscriptions of the said Article shall be taken and applied to the Form thereby established.

Vide Ecclesiastical Persons, (C. 8.)—Esq. life, (N. 10.)

(C) **Must declare his Assent to the Book of Common Prayer.**

SO, by the St. 13 & 14 Car. 2. 4. S. 6. Every Person put into an Ecclesiastical Benefice, or Promotion, shall in the Church, &c. belonging to his Benefice, within two Months after actual Possession, &c. on the Lord's Day, publicly read Morning and Evening Prayers appointed by the Book of Common Prayer, and afterwards, before the Congregation, declare his unfeigned Assent and Consent to the Use of all Things therein contained, in the Words, *I declare my unfeigned Assent and Consent to all and every Thing contained and prescribed in and by the Book, &c.*

And he who neglects it within the said Time (unless let by Impediment allowed by the Ordinary, and then within one Month after the Impediment is removed) shall be *ipso facto* deprived of all his Ecclesiastical Promotions. And the Patron, or Donor may present, &c. as if he were dead.

Every Parson, Vicar, &c. ought to declare his Assent, &c. within this Act.

So, a Stipendiary Priest, provided by the Lessee of a College, Deanery, &c. tho' no Presentation is required; but a Nomination to the Dean, and Approbation by him. R. 3 Lev. 83.

[By Stat. 23 G. 2. c. 28. It is declared, that the Bishop's Allowance of lawful Impediment for not reading the Common Prayer, extends to not reading the Declaration of Assent.]

But a Man, deprived for not giving his Assent within two Months, is not disabled to be presented *de novo*. 3 Lev. 8.

And if a Stipendiary Priest continues in the Exercise of his Function, after the two Months, with the Approbation of the Nominator, and Dean who ought to approve; this amounts to a new Nomination: And if he gives his Assent, &c. at any Time, it is sufficient. R. 3 Lev. 83.

Vide Dismes.—Esqglife.

P A R S O N A G E.

Vide Ecclesiastical Persons, (C. 6, &c.)—Parson.

P A R T I A L I T Y.

Vide Chancery, (2 K. 6.)

P A R T I C E P S C R I M I N I S.

Vide Chancery, (3 M. 7.—4 W. 28, 29.)

P A R T I C U L A R E S T A T E.

Vide Estates, (B. 13, &c.)

P A R T I T I O N.

Vide Chancery, (4 E.)—Parcener, (C. 1, &c.)—Pleader, (3 E. 1, &c.)

P A R T N E R S A N D P A R T - O W N E R S.

Vide Abatement, (E. 12.—F. 8.)—Chancery, (3 V. 4, 6, 7.)—Merchant, (D.)—Navigation, (I. 3.)

P A R T R I D G E S.

Vide Justices of Peace, (B. 46.)

P A R T Y.

Parties to an Agreement, or Deed.

Vide Chancery, (2 C. 13, 15.)—Fait, (B. 1.—C. 2.—D. 2.—E. 3.)

Parties to an Action, or Suit.

Vide Abatement, (E. 8, &c.—F. 4, &c.)—Action, (B. 1, &c.—C. 1, &c.)—Baron and Feme, (V. &c.)—Chancery, (E. 2.—T. 3.—2 M. 1, 2.—3 V. 1, 2.)—Parcener, (A. 4, 5.)

Parties and Parties.*Vide Fine, (I. 1.)—Pleader, (O. 1, &c.)***Act of Party.***Vide Abatement, (H. 41, &c.—O.)***Judge and Party.***Vide Justices, (I. 3.)***Misdemeanor of Jury, or Party.***Vide Pleader, (S. 46, 47.)***Neglect of Party.***Vide Return, (D. 2.)***Prece Partium.***Vide Abatement, (I. 21.)***P A T E N T.****(A) Grant by the King; how made.**

THE King cannot grant, or take any Thing, but by Matter of Record.
Vide Prærogative.

(B) The Form of Letters Patent.

THE King in his Patents was named in the Singular Number, till the Time of King *John*: But since, has used the Plural Number. 2 *Inst.* 2.

So the Direction of Patents, till *R. 2.* was, (and now is, of Patents of Dignity) *Omnibus Archiepiscopis, Ducibus, Marchionibus, Comitibus, Episcopis, &c.* But in other Patents it is now, *Omnibus ad quos præsentēs Literæ venerint, &c.* 2 *Inst.* 1.

So the King, by his Patent, ought to make a Grant of Lands.

But, by the *St. 31 H. 8. 13. S. 19.* A Patent, by which the King bargained and sold Lands which belonged to a Monastery, (without the Word *Grant*,) being made after 4 *Feb. 27 H. 8.* and within three Months after the *St. 31 H. 8.* shall be good. *R. Mo. 681.*

So the Clause of *hiiis testibus* was used *temp. H. 3. Ed. 1. 2. & 3.* and before, in Grants of Franchises and Inheritances. 2 *Inst.* 77.

And is now used in Patents for Creation of Dignity. 2 *Inst.* 77. 1.

But *temp. R. 2. Teste meipso* was inserted in the Place of *hiiis testibus*, in other Patents. 2 *Inst.* 78.

(C)

(C) Under what Seal made.

(C. 1.) The several Seals of the King.

WILLIAM the Conqueror sealed his Patents with an Impression upon Wax. 2 Rol. (180) l. 45. 181. l. 30. *Vide Falt, (A. 2.)*

So, William Rufus. (*Vide* 2 Rol. 181. l. 30.)

Rich. I. first used a Seal of Arms for his Seal. 2 Rol. 181. l. 21.

And after his Return from Jerusalem, changed his Arms from two Lions combatant, to three Lions passant. 2 Rol. 181. l. 25.

The Law takes Notice of three Seals of the King, the Great Seal, the Privy Seal, and the Signet. 2 Inst. 554.

If Mention be of the King's Seal, generally, it shall be understood of the Great Seal. 2 Inst. 555.

The Great Seal is in the Custody of the Chancellor, the Privy Seal in the Custody of the Clerk, or Lord Keeper of the Privy Seal, and the Signet in the Custody of the Principal Secretary, who has four Clerks of the Signet. 2 Inst. 554, 5, 6.

(C. 2.) When under the Great Seal.

By the Common Law, no Grant of the King is available, or pleadable, unless under the Great Seal. R. 2 Co. 16. b. 2 Rol. 182. l. 5.

And therefore, if the King presents to an Advowson, to which he has a Right *Jure Coronæ*, unless under the Great Seal, it shall be void. R. Cro. Car. 99.

So a Grant of all Inheritances, or Chattels Real, ought to be by the Great Seal. Mo. 476.

A Grant of a Protection, or Effoigne *de Servitio Regis*. 2 Inst. 555. *Vide Post, (C. 5.)*

So a Grant of an Office to another in Fee, or for Life, &c. R. 11 Co. 4. a.

So an Office, or Commission for intitling the King, ought to be under the Great Seal. R. Cro. Car. 173.

So a Grant of a Ward ought to be under the Great Seal. Cro. El. 851.

So the King's Writ ought to be sealed with the Great Seal. 2 Co. 17. b.

For, by the *St. Art. super Chartas*, 28 Ed. 1. 6. Under the Little Seal shall not issue a Writ which touches the Common Law. *Vide Post, (C. 5.)*

A Grant under the Great Seal shall be good, where it might have been made under another Seal: As, if the King presents to a Church of his Ward, under the Great Seal; tho' it might have been made under the Seal of the Court of Wards. R. Cro. Car. 99.

If he grants Lands within the Dutchy of Lancaster, rendring Rent to the Court of Augmentations; tho' such Rent was payable before to the Duke of Lancaster; and the Grantee shall pay only the latter Rent. Dal. 9.

(C. 3.) When under the Exchequer Seal.

But, by the Course of the Exchequer, a Lease for Years, by the King, by the Exchequer Seal, will be good. R. 2 Co. 16. b. 2 Rol. 182. l. 35. R. 1 And. 191. 2 Cro. 109.

So, a Lease for Lives. R. 2 Rol. 182. l. 45. Cro. Car. 513. For it is the antient Usage of the Court. *Dub. but no Judgment.* F.g. 90, 290.

So, the Grant of the Benefit of an Outlawry. R. 2 Rol. 182. l. 30.

So the King may make any one Bailiff of his Manor, by Patent under the Exchequer Seal. 2 Rol. 182. l. 25.

So, a Commission under the Exchequer Seal, for the Information of the King only, will be good. R. Cro. Car. 173.

So the Custody of Lands forfeited for Attainder, &c. may be under the *Exchequer* Seal. *R. 2 Cro. 109.*

So a Grant under the Seal of the Court of Wards, of a Thing which related to his Ward, was good: As, a Presentation to an Advowson of his Ward. *R. Cro. Car. 99. R. 2 Cro. 248.*

So a Lease by the King of the Lands of the Ward, during the Ward's Minority. *R. Cro. El. 851.*

But a Presentation under the *Exchequer* Seal is not good. *2 Cro. 248.*

(C. 4.) Or the Dutchy Seal.

So a Grant under the Dutchy Seal of Lands within the County Palatine of *Lancaster*, shall be as good, as if it was under the Seal of the County Palatine of *Lancaster*. *Semb. 1 Ver. 295. R. 1 Lev. 28.*

So Leases in Possession or Reversion, of Lands within the County Palatine, under the Dutchy Seal, are of the same Validity, as a Lease of Lands of the Crown under the Great Seal. *4 Inst. 209.*

And by the *St. 3 H. 7.* Grants of Lands, Advowsons, &c. Parcel of the Dutchy of *Lancaster*, are void, if not under the Dutchy Seal. *Vide Plo. 218.*

And therefore, a Grant under the Great Seal only, is not good. *Hard. 171.*

So a Grant to a Corporation of Lands within the Dutchy, is good under the Dutchy Seal.

So the King may make a Corporation under the Dutchy Seal, within the County-Palatine; tho' not out of it. *Mo. 167. 2 Leo. 151.*

So a Grant of the next Avoidance of a Church, the Advowson of which belongs to the Dutchy, under the Great Seal, is not good: For it ought to be under the Dutchy Seal. *2 Rol. 182. l. 20.*

So a Presentation to an Advowson, Parcel of the Dutchy, ought to be under the Dutchy Seal. *R. cont.* that it may be under the Great Seal; for it is a Fruit fallen, and not within the *St. 3 H. 7.* being but a Recommendation of a Clerk to the Ordinary, which may be by *Parol.* *1 Rol. 182. l. 15. Mo. 874. 1 Brown. 162.*

(C. 5.) Or under the Privy Seal.

So the King may dispose of a Chattle under his Privy Seal: As, he may issue his Treasure under the Great or Privy Seal. *11 Co. 92. 2 Rol. 183. l. 7. Mo. 476. 4 Inst. 116. 2 Inst. 555.*

Or, make an Obligation under his Privy Seal. *2 Rol. 183. l. 15.*

Or, discharge a Debt. *2 Rol. 183. l. 30. Hard. 204. Sav. 22.*

Tho' it be a Debt upon a Recognizance forfeited. *2 Rol. 183. l. 25. 2 Inst. 555.*

So, by the Privy Seal, the King may dispose Armour, Horses, or other Personal Things. *Mo. 476.*

Or, present to an Avoidance: For an Interest does not pass; but it is the Nomination of a Clerk to the Ordinary, which may be by *Parol.* *2 Cro. 248.*

So the King may grant, by Patent under his Privy Seal, to make a general Attorney in all Pleas. *2 Rol. 183. l. 12. F. N. B. 26. A.*

Or, may commit to another the Office of Chancellor in *Ireland.* *2 Rol. 183. l. 17.*

Or, make a Warrant for a Patent. *Semb. Dy. 133. b.*

So the King may inhibit, by Private Seal, *quod ne exeat Regnum.* *2 Rol. 183. l. 28. 2 Co. 17. b.*

Or, require the levying of his Debts. *Mad. 593.*

Or, make a *Superfedeas* of Process in the Case of the King. *2 Inst. 555.*

Or, grant a *Nisi prius*, where the King is a Party. *Ibid.*

Or, allow a Plea against the King. *Ibid.*

So, in other small Matters which do not cause Delay to the Subject. *Ibid.*

But

But, by the *St. Art. super Chartas* 6. *De south le petit ne isserra desormes nul Briefe que touche le Common Ley.* 2 *Rol.* 183. l. 20. 2 *Inst.* 554.

So, a Protection or Warrant of *Essoigne*, under the Private Seal, is of no Force. 2 *Rol.* 183. l. 30. *Vide Ante*, (C. 2.)

Nor, a Grant of an Office. *R.* 11 *Co.* 4. a. *Vide Ante*, (C. 2.)

(C. 6.) Under the Privy Signet.

So the King may forbid to go out of the Realm, under the Privy Signet. *F. N. B.* 85. A. 2 *Rol.* 183. l. 51. 2 *Co.* 17. b. 2 *Inst.* 556.

But the Privy Signet is not a sufficient Warrant to issue Treasure. 11 *Co.* 92. 2 *Rol.* 183. l. 50. *Mo.* 476. 4 *Inst.* 116.

Nor, to discharge a Debt. 2 *Co.* 17. b. 2 *Rol.* 183. l. 55.

Nor, to confess a Bill in Equity, which prays to be discharged from a Debt, or Account. *R. Hard.* 204.

(C. 7.) Sign Manual.

If the Sign Manual be to a Grant or Warrant, regularly it ought to be countersigned by a Principal Secretary of State, or the Lords of the Treasury. *Eq. Ca.* 54, 209. *

And if it be but a Direction for another Act, as for Letters Patent to be made, &c. it is sufficient that it be countersigned. *Eq. Ca.* 54. *

If it be of itself the Principal Act, it is countersigned, and also sealed by the Signet, or Privy Seal. *Eq. Ca.* 54. *

But where an Act of Parliament directs, that the King assign Securities, &c. by his Sign Manual, it need not be countersigned. *Eq. Ca.* 209. *

(D) The Manner of passing a Patent ; By the *St.* 27 H. 8. 11.

IF the King makes a Grant by Letters Patent to be passed under the Great Seal, by the *St.* 27 H. 8. 11. Every Gift, Grant, or Writing made by the King, or any of his Posterity, for that Intent, to any Person, signed by his Sign Manual, before it pass any of his Seals, or other Process be made of the same, shall be brought to the King's Principal Secretary, or one of the Clerks of the Signet, to be passed at the Office of the Signet.

And this extends to any Gift, or Grant, &c. to pass the Great Seal of *England*, *Ireland*, *Dutchy of Lancaster*, or other County Palatine, or Principality of *Wales*, or by other Process out of the *Exchequer*; and to all Grants, which the Master of the Wards, or Surveyor-General of the King's Lands, or other Officer, by Act of Parliament, or the King's Grant, made or to be made, can make. By the same Statute.

By the same *St.* 27 H. 8. 11. One of the Clerks of the Signet, to whom such Writing shall be delivered signed with the King's Hand, shall by Warrant of the same Bill in eight Days after it's Receipt (unless he have Knowledge from the King's Principal Secretary, or otherwise, of the King's Pleasure to the Contrary) make in the King's Name, Letters of Warrant under the Hand of such Clerk, and sealed with the King's Signet, to the Lord Keeper of the Privy Seal, for further Process to be had therein. *Vide* 2 *Inst.* 556.

And the Clerk of the Privy Seal, by Examination of the Warrant from the Signet by the Lord Privy Seal, shall in eight Days (unless commanded by the Lord Privy Seal to the Contrary) make other Letters of like Warrant, subscribed by the said Clerk of the Privy Seal, to the Lord Chancellor or Keeper, Chancellor of the *Dutchy of Lancaster*, or *Ireland*, Treasurer and Chamberlain of the *Exchequer*, Chamberlains of other County Palatine, or Principality of *Wales*, or other Officer, and every of them, by writing and sealing with the Seals in their respective Custodies, Letters Patent or Close, or other Process requisite to such Grants. By the same Stat. Sect. 2.

And

And no Clerk, or other Person, shall make, or procure any Warrant, Grant, &c. to be passed under the said Seals in other Fashion, on Pain of 10*l.* a Moiety to the King, a Moiety to him that will sue, &c. *By the same Stat. Sect. 3.*

Provided, not to prejudice Warrants or Precepts which the Lord Treasurer, by Virtue of his Office, may direct immediately to the Lord Chancellor, &c. for making Grants, or Letters Patent from the King of any Offices, Farms of Lands, &c. belonging to his Nomination or Disposition: But that the same may pass without Signet, or Privy Seal, as before. *By the same Stat. Sect. 5.*

Provided, Leases of Lands, &c. in the County Palatine of Lancaster, or Dutchy of Lancaster, which the Chancellor may grant in the King's Name, may pass under the Seal of the Dutchy, &c. as heretofore. *By the same Stat. Sect. 6.*

Provided, not to prejudice any, whom the King by express Command directs to procure any thing to be sealed with the King's Seals, concerning the King's private Affairs, or the Affairs of the Realm; but such Things may be written and sealed without Warrant or Fees, at the Signet or Privy Seal. *By the same Stat. Sect. 11.*

But if a Patent passes by Bill signed, without a Privy Seal, the Patent is subscribed, *Per ipsum Regem*, and the Bill signed remains with the Chancellor for his Warrant. 8 Co. 18. *b*, *The Prince's Case*.

If it passes by Bill signed and Privy Seal, the Bill signed remains with the Clerk of the Signet, and an Extract of it is made by the Lord Privy Seal, for making the Privy Seal, and the Privy Seal remains with the Chancellor, and the Patent is subscribed, *Per Breve de privato Sigillo*. 8 Co. 18. *b*, *The Prince's Case*.

Et Auctoritate Parliamenti is added if it passes according to the St. 27 H. 8. 11. 8 Co. 18. *b*, *The Prince's Case*.

If the King signs the Patent itself in the upper Part, and the Signature goes with the Great Seal, it is subscribed, *Per ipsum Regem manu sua propria*. 8 Co. 118. *b*, *The Prince's Case*.

If it be made by Authority of Parliament, it is subscribed, *Per ipsum Regem & totum Concilium in Parlamento*. 8 Co. 19. *a*, *The Prince's Case*.

If a Warrant for a Patent be dated 31 Oct. 37 H. 8. and upon Delivery to the Chancellor, a Memorandum is indorsed *1 Dec. deliberat'*, omitting the Year, yet being filed among the Memoranda of the 37th Year, and the Patent being dated *1 Dec. Anno 37 H. 8.* it will be well. *Semb. Dy. 133. b.*

(E) Inrolment of a Patent.

Vide Post,
(G.)

SO a Patent ought to be inrolled; otherwise it will be void. And therefore, if a Lease for Years be acknowledged before Commissioners, with a Prayer that it be inrolled, and such Prayer be indorsed, but the Lease to the King never is inrolled in the Life of the Lessor, or of the King, it will be void. *R. Lane 35, 60. Vide infra.*

If an Officer surrender his Office, and his Surrender is recorded in Court, yet, if the Patent is not delivered to be cancelled, the Surrender is not effectual. *Semb. Dy. 176. Vide Post, (G.)—Vide Officer, (K. 9.)*

So, if a Patent be delivered to be cancelled, but there is no actual Surrender, or Cancelling, or *Vacatur*, entred of the Inrolment of the Patent, it is not sufficient. *Semb. Lane 14.*

But if a Deed, by which a Grant is made to the King, be acknowledged before a Master in Chancery, and delivered to be inrolled; it is sufficient, tho' it be not inrolled, but put into a Chest: For, if it be in Filaciis or Memorandis of the Exchequer, it may be inrolled at any Time. *Cont. Dy. 355. a. But the Opinion is denied there in Marg. and said to be R. acc. Mo. 676. Hut. 1.*

So, if a Deed be inrolled, by Mistake, before the Day of the Date. *R. Mo. 676.*

So, if it be acknowledged before the Attorney of Augmentations, out of Court: For he is a Judge of the Court. *Ibid.*

So,

So, if a Prayer, that it be inrolled, be indorsed, it is sufficient; tho' it be not inrolled, till after the Death of the King. *Semb. Lane 32. But in this Case it was R. cont. Lane 35, 60. Vide supra.*

(F) Repeal of a Patent.

(. 1.) In what Cases it may be.

IF the King grant a Thing not grantable, he, *Jure Regio*, for the Advancement of Justice and Right, may have a *Scire facias* for repealing his own Letters Patent. 4 *Inst.* 88.

(F. 1.)
Where the Patent was of a Thing which the King could not grant.

As, if he grant Lands, which were conveyed to the King by Covin to defeat a Subject of his Seigniority. *Dy.* 269. a.

If the King grant Possessions, Part of the Dutchy of Cornwall, his eldest Son, when born, may have a *Scire facias*, in the Name of the King, for repealing it, without alledging Fraud, &c. 2 *Rol.* 192. l. 5.

But if the Patent be void in itself, *Non concessit* may be pleaded to it, without a *Scire facias* to repeal it: As, if a Commission be, that, upon a Discovery of defective Titles, a Grant shall be made upon the Warrant of the Commissioners, without other Warrant, and a Patent is made by their Warrant, of a Thing out of their Commission. *R.* 2 *Rol.* 191. l. 20.

So, if a Grant be founded upon a false Suggestion, the King, *Jure Regio*, may have a *Scire facias* for repealing it. 4 *Inst.* 88. 2 *Rol.* 191. l. 35.

(F. 2.)
Or founded upon a false Suggestion.

As, if it recites another to have an Office, and grants it *cum post Mortem*, *Sursum-redditionem*, &c. *vacare contigerit*; when he had then forfeited it. *Dy.* 197. b.

If a Patent be for a Market, *ad Nocumentum* of another Market. *R.* 3 *Lev.* 221.

Tho' a Writ of *Ad quod Damnum* was executed before the Patent passed, which found it not *ad Nocumentum*. *R.* 2 *Vent.* 344.

So, if an Officer makes a Forfeiture of his Office, granted by Patent, the King may have a *Scire facias* for repealing his Patent. *Dy.* 197, 198, 211. a. *Vide Post*, (F. 5.)—*Vide Officer*, (K. 11.)

(F. 3.)
Or a Forfeiture be committed.

And that, without an Inquisition, or Office found of the Forfeiture. *R.* *Dy.* 211. a.

So, if the King grant, by his Letters Patent, the same Thing to several Persons, a *Scire facias* lies for repealing the last Patent. 4 *Inst.* 88.

(F. 4.)
If there are two Patents of the same Thing. When a *Scire facias* lies by the Patentee.

And in such Case, the *Scire facias* shall be brought by the first Patentee. 4 *Inst.* 88. *Dy.* 197. b. 198. a. *Adm. Dy.* 133. b. 2 *Rol.* 191. l. 50. *Cont.* 39 *H.* 6. 33.

Tho' both Patents are made of the Reversion of an Office, to take Effect at the same Time. *Dy.* 198. a.

And a *Scire facias* by the last Patentee shall not be allowed, tho' he seems to have the Right with him. *R.* *Dy.* 276. b. 277. a. *Vide Post*, (F. 5.)

So, if a Patent be made to the Prejudice of another, he may have a *Scire facias* to repeal it: As, if a Market, Fair, &c. be granted to the Annoyance of an antient Market of another. *Dy.* 276. b.

So, if a Tenure be found of the King by Office, upon which the King grants the Ward, after Traverse of the Office, *A.* who was really the Lord, may have a *Scire facias* against the Grantee. 2 *Rol.* 191. l. 45.

But if there be only one Patent, the Patentee shall not be ousted by the King for a Cause of Forfeiture, without a *Scire facias* against him at the Suit of the King. *Dy.* 198. a. *R.* *Dy.* 211. a. 2 *Rol.* 192. l. 2.

(F. 5.)
When a *Scire facias* is not necessary.

Except where the Cause of Forfeiture appears by Office, or other Record: For then the King may oust the Patentee without a *Scire facias*. R. 9 Co. 95, 96. 2 Rol. 191. l. 10.

If the King grants by Patent to *A.* and afterwards by a second Patent grants another Thing to *B.* who by Colour of it ousts *A.* where in truth *A.* had not a Grant for the same Thing; he shall not have a *Scire facias*, but an Affise. 2 Rol. 192. l. 12.

If the King grants the same Thing to divers, by two several Patents, the second Patentee cannot have a *Scire facias* against the first. 2 Rol. 191. l. 52. *Vide Ante*, (F. 4.)

(F. 6.)
Scire facias
for repealing
a Patent.
In what
Court it lies.
Vide Ante,
(F. 1, &c.)

A *Scire facias* for repealing a Patent may be sued in Chancery. 4 Inst. 79, 88. Dy. 197. b. 3 Lev. 220. *Vide Chancery*, (C. 1.)

[If *Scire facias* out of the petty Bag is returnable *coram nobis in Cancellaria nostra in Octab. &c. ubicunque tunc fuerit*, it is good, without being limited *ubicunque in Anglia*. Rex v. Hare, H. 5 G. Str. 146.]

So a *Scire facias* for repealing a Patent of the King, may be brought in B. R. 4 Inst. 72.

If it be returnable there, only B. R. hath Jurisdiction to examine the Irregularity of the Issuing, Return, &c. Mod. Ca. 229.

It may be sued by the King, or by him who has a Prejudice by the Patent. R. Mod. Ca. 229.

(F. 7.)
In what Man-
ner sued.

A *Scire facias* ought to be founded upon some Record: And therefore, a *Scire facias* to repeal a Patent ought to be in Chancery, where the Patent is upon Record; or in a Court where a Forfeiture, or other Cause of Repeal appears by Office, or other Matter upon Record in the same Court. R. 3 Lev. 223. Semb. Mod. Ca. 229.

But the Patent itself is a sufficient Record, upon which a *Scire facias* may be founded for repealing the Patent. R. 3 Lev. 223.

So an Inquisition, which finds a Patent, and a Cause of Forfeiture is a sufficient Ground for a *Scire facias*. *Vide Officer*, (K. 11, &c.)

So, an Information, or an Indictment, for an Offence which is a Cause of Forfeiture, and a Conviction in it.

A *Scire facias* is sufficient, if it alledges Matter by *datum est nobis intelligi quod, &c.* for that is sufficient to put the Party to an Answer. R. 3 Lev. 222.

So, if a *Scire facias* be by the King for repealing a Patent upon a Forfeiture of an Office, the Cause of Forfeiture ought to be mentioned in the Writ. Dy. 198. b.

But if a *Scire facias* be by a former Patentee, the Writ need not mention any Cause of Forfeiture. Dy. 198. b.

(F. 8.)
Pleas to a
Scire facias,
and Judgment
upon Confes-
sion, or by
Default.

If the Defendant in a *Scire facias* can say nothing for maintaining the Patent, Judgment may be for annulling the Patent upon his Confession. Dy. 197. b.

So Judgment shall be in the same Manner, if the Defendant, being returned warned, makes Default. Dy. 197. b. 2 Rol. 192. l. 20, 25.

Or, if the Default be upon two *Nichils* returned. Dy. 198. a.

So the Defendant may demur upon a *Scire facias*, if the Matter alledged be not sufficient for a Repeal of the Patent. 3 Lev. 221.

[That the Grant (without mentioning the User) is to the Prejudice of, &c. is a good Issue. Rex v. Eyre, H. 3 G. Str. 43.]

The Judgment in a *Scire facias* for repealing a Patent shall be, *Quod Litera Patentes Domini Regis revocentur, cancellentur, evacuentur, & adnullentur, & vacuæ, invalidæ, & pro nullo penitus habeantur, ac quod Irrotulamentum eorum cancelletur, cassetur, & adnibiletur*. 4 Inst. 88. Dy. 197. b.

(G) Surrender of a Patent.

SO, if a Man surrender his Patent, and it be cancelled, and a Note of it indorsed, and afterwards the Surrender inrolled, it shall be vacated by it. *Dy. 167. a.*
And after the *Vacatur* entered upon the Roll, a *Constat* of it shall not be granted. *Dy. 167. a. in Marg.*

If a Patent be to two, and the Chancellor makes a Duplicate, and delivers the Original to one, and the Duplicate to the other, a Surrender of the Original Patent is sufficient, tho' the Duplicate be not surrendered, or cancelled: For the Duplicate was made by the Chancellor, without Warrant. *R. Dy. 179. b.*

But a Surrender, and cancelling with an Indorsement of it, is not sufficient, if the Surrender be not inrolled. *Dy. 167. a. 195. a.*

Nor a Surrender to a Master in *Chancery* out of Court, which was accepted by him, and inrolled, without Delivery of the Patent to be cancelled. *Semb. Dy. 176. Vide Officer, (K. 9.)*

Vide Ante, (E.)

(H) How a Patent shall be pleaded.

IF a Man pleads a Grant by Letters Patent, he ought to shew under what Seal.

Per Hale 1 Vent. 222.

Vide Pleader. (C. 62, &c.)

Right Patent.

Vide Droit, (B. 1, &c.—D.)

Vide more relating to Patent, in Dignity, (C. 4.)—Dismes, (C. 5.—E. 7.)—Grant, (G. 1, &c.)—Parliament, (L. 36.)—Viscount, (G. 5.)

P A T R O N.

Vide Advowson.—Ecclesiastical Persons, (C. 10, 11.)—Esglise, (H. 2, 5.—Visitor, (A. 4.)

P A U P E R.

Suit in Formâ Pauperis,

Vide Formâ Pauperis.

Pool.

Vide Justices of Peace, (B. 64, &c.)

P A W N.

Vide Mortgage.

P A W N A G E, or P A N N A G E.

Vide Chase, (O. 2.)—Grant, (E. 8.)

PAYMENT.

P A Y M E N T.

*Vide Chancery, (4 F.)—Merchant, (F. 1, &c.)—Pleader, (2 G. 10.
—2 W. 29.)*

Payment of Debts.

*Vide Administration, (C. 1, 2.)—Chancery, (3 A. 3, &c.—3 P. 1, &c.—4 H. 1.
—4 W. 14.)*

Payment of Legacies.

*Vide Administration, (C. 3, &c.)—Chancery, (3 A. 3, &c.—3 G. 2, &c.—3 Y.
3, 6.)*

P E A C E.

Vide Leet, (M. 9.)—Prærogative, (D. 1, &c.)

Justices of Peace.

*Vide Title Justices of Peace.—Dismes, (M. 4.)—Forceable Entry, (A. 1.—D. 1,
&c. 12, &c.—London, (K. 6.)*

Clerk of the Peace.

Vide Justices of Peace, (D. 5.)

Contra Pacem.

Vide Action upon the Case, (C. 4.)—Pleader, (3 M. 8.)—Prohibition, (F. 7.)

Surety of the Peace.

Vide Forceable Entry, (D. 16, &c.)—Justices of Peace, (B. 5, 6, 7.)

P E C U L I A R.

Vide Administration, (B. 6.)—Administrator, (B. 3, 5.)

P E E R A N D P E E R A G E.

*Vide Abatement, (D. 4.)—Chancery, (D. 2.)—Dignity, per Totum.—
Ecclesiastical Persons, (C. 1.)—Nobility.—Officer, (E. 5.)—Parliament,
(L. 16, &c.)—Scotland, (D. 4, 6.)—Serement, (C.)*

P E N A L S T A T U T E.

*Vide Action upon Statute, per Totum.—Forfeiture, (C.)—Parliament,
(R. 19, 20.)*

PENALTY.

P E N A L T Y.

Vide Allegiance, (B. 4.)—Chancery, (3 S. 2.—4 D. 16, 19.)—Forfeiture.—Heresy, (B. 6.)—Penal Statute.—Prærogative, (D. 60.)

P E N S I O N S.

Vide Prohibition, (G. 11.)—Tenths, (D.)

PERAMBULATION OF A FOREST.

Vide Chase, (G. 1.—I. 1, 2.)

PERAMBULATIONE FACIENDA.

Vide Pleader, (3 G.)

P E R F O R M A N C E.

Vide Chancery, (2 C. 1, &c.—2 X. 1, 2.—4 D. 4, 14.)—Condition, (G. 1, &c.—K. 1.—L. 1, &c.—M. 2, &c.—Covenant, (E. 2.)—Estates, (A. 7, 8.)—Pleader, (C. 51, &c.—2 G. 15.—2 V. 13.—2 W. 33.)

P E R J U R Y.

Vide Action upon the Case, (B. 7, 8.)—Justices of Peace, (B. 102, &c.)

P E R P E T U I T Y.

Vide Chancery, (4 G. 1, &c.)

P E R S O N A T I N G.

Vide Action upon the Case for a Deceit, (A. 3.)

P E T I T I O N.

Vide Parliament, (F. 1, &c.—L. 2, 14, 15.)—Prærogative, (D. 78, &c.)

P E T I T C A P E.

Vide Process, (D. 5.)

P E T I T C O N S T A B E.

Vide Leet, (M. 6.)

P E T T L A R G E N Y.

Vide Justices, (O. 4.)

P E T I T T R E A S O N.

Vide Forfeiture, (B. 3, 5.)—Justices, (L. 1, &c.—Y, 4.)

P H E A S A N T S.

Vide Justices of Peace, (B. 46.)

P H Y S I C I A N S.

(A) Physicians ; The College of Physicians.

All Medicines are administered by Physicians, Apothecaries, or Surgeons.
 By Charter 23 Sept. 10 H. 8. The King incorporated the Physicians in London, *per nomen Presidentis & Collegii, sine Communitatis Facultatis Medicinae London.* 8 Co. 108, 114.

And granted by the same Charter, that within 7 Miles of London, or within London, None shall practise Physick, if he be not allowed by the President and College, *sub pena 5 l. per Mensem*, a Moiety to the King, a Moiety to the College. 8 Co. 114.

And that there be four Censors annually chosen by the College, *qui haberent Scrutinium, Correctionem, et Gubernationem omnium Medicorum Facultatem illam uten' in London, aut Suburbia, aut 7 Milliar' in Circuitu ejusdem Civitat', Et omnium Medicinarum, &c.* (*Vide 8 Co. 114. b.*)

By the St. 14 H. 8. 5. This Corporation, and every Clause in the same Charter are confirmed.—And afterwards, by the St. 1 Mar. 9.

So, by the same St. 1 Mar. 9. it is enacted, That if the said President and College, or such as they yearly authorize to search, examine, correct, &c. commit any Offender for his Offence, to any Prison in London, the Gaoler, &c. shall keep him without Bail, till discharged by the President, or those authorized, &c. on pain of double the Fine or Amerciament assessed on the Offender; so as such Fine, &c. exceed not 20 l. at any one Time; a Moiety to the King, a Moiety to the College.

So, by the St. 14 H. 8. 5. No Person shall practise Physick through England, till examined at London by the President and three Elects, and having Letters Testimonial from them; except he be a Graduate of Oxford or Cambridge, &c.

And therefore, if any (not a Graduate of one of the Universities) practise Physick in London, or within 7 Miles, without Licence of the College of Physicians, he shall be subject to 5 l. per Month Penalty. R. 2 Bul. 185.

Tho' he be a Man of Skill: For the St. 14 H. 8. 5. extends to all Physicians. Pal. 486.

So, if he practise in another Part of the Kingdom, without their Licence.

Tho' the King, by Patent grants him a Licence to practise. R. 4 Mod. 47.

And this Penalty of 5 l. per Month every one will be subject to pay, tho' he does not use Male-practise. 8 Co. 117. b.

And an Information lies for the Penalty. Ibid.

Or an Action of Debt by the President and College *Qui tam, &c.* 2 Cro. 121. Cro. Car. 256.

And

And if the President dies after Judgment, and before Execution, his Successor, and not his Executor, shall have Execution. 1 *Brownl.* 93. 2 *Cro.* 159.

But an Action does not lie by the President alone. R. 2 *Bul.* 185.

So, for Male-practice of Physick, the Censors may punish any one by Fine, Amerciament, Imprisonment, &c. *secundum Quantitatem delicti.* 8 *Co.* 117. *b.*

Tho' he did not use Male-practice for the Space of a Month. 8 *Co.* 117. *b.* 120. *b.*

And they may, for Cause allowed by the Charter and Statute, impose a reasonable Fine, and make a Record of it, and for Non-payment immediately imprison him. 8 *Co.* 120, 121.

And therefore, they have a Judicial Power in Cases within their Conusance. R. 1 *Sal.* 396. *Carth.* 494.

And they are a Court of Record: For otherwise they could not fine and imprison. *Ibid.*

And therefore, if they make a Judgment of a Thing within their Conuzance, it cannot be traversed: As, if they determine any Medicines to be hurtful and unwholsome. *Ibid.*

But, by the St. 14 H. 8. 5. None shall practise Physick through England, except a Graduate of Oxford or Cambridge, who hath accomplished, &c. his Form, without any Grace.

And therefore, a Graduate in an University may practise Physick, without Licence of the College, in any Part of the Realm, out of London, or the Suburbs. 2 *Brownl.* 261.

So he may in London, or the Suburbs; for he is not within the enacting Part of the Statute, or at least he is excepted by the Exception. *Per Daniel J. Warburton cont.* 8 *Co.* 116. *b.*

So any may practise in London without a Licence, if he does not use it for a Month. 8 *Co.* 117. *b.* 120. *b.* 2 *Brownl.* 264.

And if he uses it for a Month, he can have no other Punishment than 5*l.* per Month. 8 *Co.* 120. *b.*

So an Apothecary may send Physick to a Patient, for a Distemper which he knows, without Direction by a Doctor, tho' he has not a Licence. R. *cont.* B. R. But this was R. in Parl. Mod. Ca. 44.

So the Censors have no Power, by Charter or Statute, to punish any by Fine or Imprisonment, for practising Physick without Licence; for their Power of Punishment extends only to Male-practice. R. 8 *Co.* 117, 120. 2 *Brownl.* 264.

So they cannot impose a Fine, but for a certain Cause. 8 *Co.* 121. *a.* *Skin.* 676.

Neither can they impose a Fine for themselves; for the Fine belongs to the King. R. 8 *Co.* 119. *b.* 121. *a.*

Neither ought it to be imposed by the President and Censors, but by the Censors only. 8 *Co.* 119. *b.*

Neither ought it to be imposed, without making a Record of it. 8 *Co.* 120.

And if there be Imprisonment for Non-payment, it ought to be inflicted immediately. 8 *Co.* 119. *b.* 120. *a.*

So a Remedy for a Fine, or Penalty, ought not to be by Plaint before themselves; but by Action, &c. at the Common Law. 2 *Brownl.* 265.

So none shall be fined, and also imprisoned for the same Offence. *Ibid.*

(B) Privilege of a Physician.

SO, by the St. 32 H. 8. 40. The President or Fellows of the College of Physicians shall not exercise the Office of Constable, or other Office in London, or the Suburbs, nor keep Watch or Ward; but if chosen to the Office, &c. his Election shall be void.

(C)

(C) Apothecary.

BY the *St. 32 H. 8. 40.* Mention is made of the Wardens of the Mystery of Apothecaries in *London.*

And, by the *same Statute*, The President of the College of Physicians may yearly appoint four most discreet of that Faculty, who, being sworn by the President, may, as oft as they see fit, enter the Houses of Apothecaries in *London*, to search Wares, &c. And such as they find corrupt or unmeet for Medicines, to destroy: And an Apothecary, refusing Entrance for such Purpose, forfeits 5*l.* for each Offence. And a Person elected, refusing to be sworn, or make search, &c. 40*s.*

(D) Surgeon.

BY the *St. 3 H. 8. 11.* No Person in *London*, or seven Miles, shall practise Physick or Surgery, unless examined and allowed by the Bishop of *London*, or Dean of *Paul's*, with four Doctors of Physick, and for Surgery, others expert (four at least so approved) on Pain of 5*l.* per Month, &c.

And this Statute continues as to Surgeons, tho' as to Physicians it is varied by the *St. 14 H. 8. 5.* and 1 *Mar. 9.*

But, by the *St. 3 H. 8. 11.* A Graduate of either University is excepted,

So, by the *St. 32 H. 8. 40.* Since the Science of Physick comprehends the Knowledge of Surgery, the President and Fellowship of Physicians, or the Fellows admitted by them, may practise Physick in all it's Parts.

So, by the *St. 34 H. 8. 8.* Any Subject, who hath the Science or Experience of Herbs, Roots, or Water, by Speculation or Practice, may minister, &c. to any outward Sore, Swelling, Disease, &c. in *London*, or elsewhere, any Herbs, Ointment, Baths, Plaisters, &c. according to their Cunning, or Drinks for the Stone, Strangury, or Agues, without Penalty, &c.

And this Liberty for Application in Surgery to external Sores, &c. or for Potions in three Particulars, continues not repealed by the *St. 1 Mar. 9.* which regards Physicians. *Per Cro. Richardson cont. Cro. Car. 257. Lit. 169, 212, 351. Jon. 261. R. Cont. 2 Cro. 121.*

Yet, the *St. 34 H. 8. 8.* enables only to make Application to external Sores, &c. not to internal.

So it extends only to good Women in the Country, &c. who act for Charity; not to those who administer for Profit. *R. Lit. 351.*

P I C A G E.

Vide Market, (F. 2.)

P I E - P O W D E R.

Vide Market, (G. 1, 2.)

P I L L O R Y.

Vide Leet, (K.)—Tumbrel, (B.)

P I O U S U S E S.

Vide Uses, (M.—N. 1, &c.)

P I S C H A R Y.

Vide Courts, (D. 9, 13.)

P I R A C Y.

Vide Admiralty, E. 3.)

P I S C H A R Y.

(A) The Nature of the Privilege.

A Pischary is the Liberty of fishing in the Water of another. *Nom. verb. Pischary.*

And this Liberty may be claimed by Grant or Prescription. *Vide Prærogative, (D. 50.)*

By a Grant of a Pischary, the Liberty only passes, and not the Soil. *Co. L. 4. b. Cont. Dav. 55. b.*

And a Grant may be made *de Liberâ, vel de Separali Piscariâ.*

If a Grant be *de separali Piscariâ*, the Grantee ought to have the Soil; For in Trespas for fishing in *separali Piscariâ*, *liberum Tenementum* of another, is a good Plea. *Sal. 637.*

If a Grant be *de liberâ Piscariâ*, the Grantee shall have the Property of the Fish there, and shall maintain Trespas for fishing there. *Semb. Sal. 637. 4 Mod. 186, 7. Skin. 342.*

And it may be a Free Fishery in his own Soil. *Skin. 678.*

So, by a Grant of the Water, the Fishery passes, but not the Soil. *Co. L. 4. b. Dav. 55. b.*

So the Water may belong to one; All the Profits in it, and the Soil, and Ferry to another. *Sav. 14.*

Yet, a Man may have an Estate of Freehold or Inheritance in a Fishery. *Dav. 55. b.*

And may make Livery upon a Grant of a several Fishery. *Co. L. 4. b.*

So an Assise lies of a several Fishery. *Dav. 55. b.*

So it may be demanded by a *Præcipe*. *Ibid.*

So a *Quod permittat* lies of a Fishery. *Ibid.*

And a *Monstraverunt*. *Ibid.*

So, a Writ *de Rationabilibus Divisis*. *Dav. 57. b.*

If a Man justifies for using a Pischary, he ought to shew whether it be a Common, Free, or Several Pischary. *R. Hard. 407.*

So, whether it be appurtenant to a Manor or Messuage, &c. for it is an Interest, and not an Easement. *Hard. 407.*

(B) Ferry.

SO a Ferry does not belong to him who has the Water, or a Fishery in it. *Sav. 11.*

A Ferry is a Franchise, which cannot be set up without the King's Licence. *Hard. 163.*

If it be erected by Licence, another cannot erect a Ferry to the Nuisance of it. *Vide Action upon the Case for a Nuisance, (A.)*

Tho' it be upon his own Soil. *Cont. Hard. 163. But the Reporter makes a*

But he who has the Privilege of a Ferry, ought to have a Right to the Soil upon both Sides of the Water; for he cannot land upon the Soil of another, without his Assent. *Sav. 11.*

A Ferry-man ought to be privileged, that he be not taken for a Soldier. *Ibid.*

A common Ferry-man may be indicted, if he does not keep his Ferry in good Repair. *Hard. 163.*

So an Action upon the Case lies against him, if he refuses Passengers, or takes excessive Prices. *Hard. 163. Adm. Carth. 191, 194.*

And it is sufficient to say, that all the Inhabitants of the Town have used *transire ad libitum.* *R. Carth. 191.*

And it is no Excuse, that he built and repaired a Bridge for Passage. *R. Carth. 193.*

But an Action upon the Case does not lie, for not keeping his Ferry, without special Damage, any more than for a common Nuisance. *R. Carth. 194.*

P L A C E.

Vide Pleader, (S. 9, &c.)—Privilege, (A. 2.)

P L A I N T.

Vide Abridgment.—Assise, (B. 11.)—County, (C. 8, 12.)—Courts, (P. 7.)—Pleader, (C. 9.—3 K. 2.)

P L A N T A T I O N S.

Vide Navigation, (G. 1, &c.)

P L A Y.

Vide Action upon the Case for a Deceit, (A. 1.)—Bankrupt, (D. 38.)—Justices of Peace, (B. 42.)—Pleader, (2 G. 8.—2 W. 26.)

P L E A.

Vide Abatement, per Totum.—Accompit, (E. 3, &c.)—Accord.—Action upon the Case upon Assumpsit, (H. 5, 6, 8.)—Action upon the Case for a Deceit, (F. 4.)—For a Disturbance, (B. 2.)—For Negligence, (C. 3.)—For a Nuisance, (E. 2.)—Action upon the Case upon Trover, (G. 6.)—Admiralty, (E. 21.)—Amendment, (K. 1.—M.)—Antient Demesne, (F. 5, 6.—G. 2, 3, 5.)—Annuity, (F.)—Appeal, (G. 3, 7, &c.)—Arbitrament, (I. 4.)—Assise, (B. 12, &c.—C. 3, 4.)—Attachment, (H.—I.)—Attaint, (C. 4.)—Attornment, (M.)—Attorney, (B. 22.)—Bail, (R. 3, &c.)—Bankrupt, (D. 35, 39.)—Bargain and Sale, (B. 12.)—Baron and Feme, (2 D.)—Bastard, (D. 1.)—Chancery, (I. 1, 2.)—Charters, (B. 3.)—Copyhold, (P. 4.—Q. 7.)—Courts, (P. 10.)—Devise, (P.)—Dismes, (M. 15.)—Droit, (C. 5.)—Error, (D.)—Fine, (H. 1, 2.)—Indictment, (K.—L.)—Information, (D. 5.)—Justices, (W. 3.)—Parliament.

(L. 4.)

(L. 4.)—*Patent*, (F. 8.—H.)—*Pleader*, (E. 1, &c.)—M. 2.—
O. 2.—Q. 6.—Y. 3.—2 A. 3.—2 D. 3, &c. 12, &c.—2 E. 3.—
2 G. 1, &c.—2 L. 2, 3.—2 S. 11, 17.—2 V. 4, &c.—2 W. 13,
16, &c.—2 X. 3, &c.—2 Y. 4, &c.—2 Z. 3.—3 A. 8.—3 B. 18,
19.—3 E. 4.—3 F. 3.—3 I. 7, &c.—3 K. 11, 12.—3 L. 10,
&c.—3 M. 11, &c.—3 N. 4.—3 O. 7, &c.)—*Pojar*, (F.)—*Præ-*
rogative, (D. 74.)—*Præscription*, (H.)—*Quo Warranto*, (C. 4.)—
Receipt, (B. 3.)—*Surrender*, (N.)—*Temps*, (G. 19.)—*Voucher*,
(B. 1, 2.—F. 1, 2.)—*Utlagary*, (C. 2.)

Common Pleas.

Vide Courts, (C. 1, &c.)—*Pleader*, (C. 4, 11, &c.—3 B. 2.)—*Quod Permittat*,
(D. 2.)

Consuance of Pleas.

Vide Courts, (P. 1, &c.)

Court of Pleas.

Vide Chancery, (A. 1.—*Courts*, (D. 2.)—*Dett*, (G. 14.)

P L E A D E R.

*Vide Vol. V.**

P L E D G E.

Vide Chancery, (4 A. 1, &c.)—*Mortgage*.

P L E D G E S.

Vide Bail, (C.)—*Pleader*, (C. 16.—3 K. 5.)

P L E N A R T Y.

Vide Abatement, (H. 26.)—*Esglise*, (M.)—*Pleader*, (3 I. 8.)—
Quare Impedit.

P L E N E A D M I N I S T R A V I T.

Vide Pleader, (2 D. 9.)

P L U R A L I T Y.

Vide Esglise, (N. 5, &c.)

P O I A R.

•To preserve
this Title
(which is
very considera-
ble) intire
in one Vo-
lume, it will
be placed at
the Beginning
of the Fifth.

P O W E R.

(A. 1.) How it shall be raised.

(A. 1.) Upon what Estate.

IN Conveyances to an Use, a Man may direct or model the Use, as he pleases, and the *St. 27 H. 8. 10.* executes the Possession to the Use: And therefore, he may annex Powers to Estates, which cannot be annexed to them by a Conveyance at the Common Law. *Co. L. 237. a. Mo. 610.*

And therefore, to the Limitation of an Use for Life, he may annex a Power to make Leases for 21, 99, or more Years, or for one, two, or more Lives.

Or, to make a Jointure for a Wife. *Mo. 381. 2 Lev. 58.*

Or, to grant Annuities, raise Portions, &c. *Mo. 381.*

Or, to make a Jointure, and also a Lease to commence after his Death, for Portions, &c. *Hard. 413.*

So he may annex a Power of Revocation of all Uses limited, to make a Limitation of new Uses, and this will not be repugnant. *Co. L. 237. a. R. Mo. 610. Vide Uses, (L. 2, &c.)*

So a Power may be annexed to an Estate by another Deed, executed at the same Time, tho' it be not in the same Conveyance by which the Estate is conveyed. *1 Vent. 279.*

So a Man may give a Power or Authority by Will, which is a naked Authority, not annexed to an Estate: As, if he devises to *A. for Life and afterwards that it shall be at his Disposal to any of his Children then living; he has but an Estate for Life, with a naked Power to dispose, in the Manner directed by the Will. R. 1 Sal. 240. 3 Sal. 276.*

So he may give a Power to a Stranger, which is a naked collateral Power not annexed to an Estate. *Per Hale, Hard. 415.*

Or a Power in Gross, which takes Effect after his Estate determined. *Hard. 415.*

If a Power be to *A.* or his Assigns to make Leases, &c. the Power runs with the Estate to the Assignee in Deed, or in Law. *R. 1 Vent. 340. 2 Jon. 110. Vide Post. (E.)*

So in all Cases a Power coupled with an Interest may be assigned: As, a Power to a Lessor, and his Assigns, to cut down Trees. *R. 2 Mod. 317.*

But a Man cannot annex a Power of Revocation to a Feoffment, or Grant; for that will be void. *Co. L. 237. a. Mo. 610. Vide Uses, (L. 2, &c.)*

So, if a Man, seised in Fee, covenant to stand seised to the Use of himself for Life, with Power to make Leases, Remainder to another in Fee, the Power is not well raised. *Ca. Ch. 161. If the Consideration of the Covenant does not extend to the Power to make Leases. R. Mo. 145. 1 Co. 175. R. Ray. 248.*

So upon such Covenant he cannot reserve a Power to make Leases, Jointures, or for Preferment of Younger Children, &c. *Mo. 381, 383.*

(A. 2.) By what Words.

Vide Uses, (L. 3.)

Words, which shew the Intent of the Party, are sufficient to create a Power; as, if a Power be to demise or lease, tho' the Intent is, that he declare the Uses of the first Settlement for Life, or Years: For the Lease does not take Effect by Demise, but by Declaration of the Uses. *Mo. 611.*

[If a Man having an Annuity in Fee (issuing out of the four and half *per Cent.* Duty at *Barbadoes*) directs his Executors to intail on his Daughter and her Issue, all his Estate and Effects; this, though it passes no Interest to them, and though they take nothing as Executors, yet it gives them Power to convey. *Earl of Stafford v. Bulkely, H. 1750. 2 Vezey 170.*]

So,

So, if a Man expresses the Power only by Implication, it is well: As, *Provided that he shall not have Power to alien, &c. otherwise than to make a Jointure, and Leases for 21 Years*: It is a good Power to make a Jointure, and Leases. 1 *Leo.* 148.

So, if a Devise be to *A. for Life, to set, let, and make Estates out of it as I might*, and afterwards to his Daughter in Tail; *A.* has a Power to make Leases, it being the Custom of the Country where the Land lies, to let for Lives or Years. *R. 2 Rol.* 261. *l.* 35.

[But if Lands are settled (by Act of Parliament) with a Clause to restrain Alienations, except for the *Jointures of Wives for Term of Life, &c.* a Power for such Jointress to lease her Jointure Lands for three Lives, or Years determinable on three Lives, cannot be implied, though it is the usual Way of leasing in that Country. *Roe v. Grantam, M. 2 G. 3. 3 B. M.* 1259.]

But a Power, being Executory, may be restrained or enlarged by a subsequent Deed: As, if a Power be general, to revoke; by a Covenant afterwards, that he will not revoke without the Consent of *B.* the Power is restrained. *R. Jon.* 411.

So, if the Consideration, upon which the Power was founded, does not extend to the Person, to whom the Lease is made, the Lease shall be void: As, if a Man covenant, in Consideration of natural Affection, to stand seised to the Use of himself for Life, &c. with Power to make Leases, &c. a Lease to a Stranger is void: For he is not within the Consideration. 2 *Rol.* 260. *l.* 30. *Vide Covenant, (G. 5.)*

So, if a Power, at it's Creation, be to make Leases to a Person, to whom the Consideration does not extend, it will be void, tho' the Lease be executed to a Person within the Consideration. 2 *Rol.* 260. *l.* 35.

(B) How it shall be expounded.

(B. 1.) To make Leases in Possession or Reversion.

A Power shall be expounded strictly.

And therefore, if a Man has a Power to make Leases generally, this extends to make Leases in Possession only, and not in Reversion. *R. 2 Rol.* 261. *l.* 5. 2 *Cro.* 318. *Yel.* 222. *R. Ray.* 248. *R. M. 9 W. 3. in B. R. inter Winter, and Loveday.* (1 *Ld. Ray.* 267. 2 *Sal.* 537.) 1 *Lew.* 168. *R. 6 Co.* 33. *a. Mo.* 199. *Semb. 1 Leo.* 35. 3 *Leo.* 131.

Nor a Lease to commence *in futuro.* *R. Ray.* 248. *Semb. 1 Leo.* 35. *R. Yel.* 222. 2 *Cro.* 318. *Mo.* 494.

So, if the Power be to make Leases for two or three Lives, he cannot make a Lease to one not *in Esse*; as, to the Son of *B.* not born, &c. *Per Windb. Ray.* 163.

So, if the Power be to make Leases in Possession, he cannot make a Lease of Land in Reversion, tho' it be to commence *in presenti.* *R. 1 Sid.* 101. *Ca. Ch.* 18.

So, if Part of the Lease be in Reversion, the whole Lease shall be void. 3 *Sal.* 276.

So, if the Power be to make Leases in Possession, or in Reversion, he cannot make a Lease in Possession, and another Lease of the same Land in Reversion; but his Power to lease in Reversion extends only to make Leases of the Land, which was not then in Possession. *Per Holt, M. 9 W. 3. inter Winter and Loveday.* (1 *Ld. Ray.* 269. 2 *Sal.* 537.)

So a Power to make Leases in Reversion does not warrant a Lease to commence at a future Day, but only a Lease to commence at the End of an Estate then *in Esse.* *Per Holt, M. 9 W. 3.* (1 *Ld. Ray.* 269. 2 *Sal.* 537.)

So a Power to make a Lease for three Lives or 30 Years in Possession, or for two Lives or 30 Years in Reversion, warrants only a concurrent Lease for two Lives; for a Lease for Lives cannot commence at a future Day. *Per Holt, M. 9 W. 3. inter Winter and Loveday.* 1 *Ld. Ray.* 269. 2 *Sal.* 537.)

But if a Power be annexed to the Estate of him in Reversion, to make Leases generally, he may make a Lease *in presenti* of the Reversion. *R. 1 Lev. 168.*

Tho' the Power be to make Leases in Possession. *Dub. Ca. Ch. 18. Acc. per Keeling but 2 J. cont. 1 Lev. 168. and it was admitted cont. 1 Sid. 260, 261.*

So, if a Fine be to the Conusee for 15 Years, afterwards to B. for Life, &c. with Power to lease for three Lives, or 21 Years in Possession; he may make a Lease during the 15 Years, of Land in Lease at the Time of the Fine, when such Lease expires. *Per Coke, 2 Rol. 260. l. 50. 2 Gro. 347. 2 Bul. 216. 1 Rol. 12.*

So, if Husband and Wife lease pursuant to the *St. 32 H. 8.* and then, by Act of Parliament, the Estate is settled to the Husband for Life, with Power to lease for three Lives or 21 Years; he may make Leases of the Reversion during the first Lease by Husband and Wife. *2 Rol. 261. l. 15. Semb. 1 Leo. 36. Per 2 J. Monson cont. Dy. 357. a.*

So, if a Power be to make Leases in Reversion for three Lives, &c. he may lease for three Lives, when there is another Life *in Esse*, tho' the Power does not say, to make Leases of the Reversion; for there is no Prejudice. *R. 2 Rol. 261. l. 30.*

So he may make a Lease for Years determinable upon three Lives, to commence after the End of the former Lease *in Esse*. *R. 8 Co. 70.*

[The Intent of the Parties who gave the Powers, ought to govern every Construction of them. *Taylor v. Horde, H. 30 G. 2. 1 B. M. 60.*]

[The Plan of the Power to make Leases, is for the mutual Advantage of Possessor and Successor. *Ibid.*]

[If a Man devise Lands to Trustees for Payment of Debts, then in Trust for A. for Life, then to his first and other Sons, then to B. for Life, then to his first and other Sons, then to C. &c. in like Manner, Remainder to his own right Heirs, with a Power to Trustees to raise Money for Debts, by letting Leases for 31 Years, in Possession and Reversion, and after Debts paid, whoever should be seized might make 31 Years Lease. B. dies in Devisor's Life, who makes Codicil declaring his Will should remain, in all but the Particulars expressed; and gives Part of his Lands to A. for Life, with Remainders over, *with such Powers as by his Will devised*; and gives other Lands to D. (the Son of B.) for Life, then to his first and other Sons, then to his Daughters, then to A. (who is Devisor's Brother) for Life, then to his first and other Sons, Remainder to *such Persons, and with such Powers, as his other Estate devised to him is appointed to go*. D. has a Power to grant 31 Years Leases. On Error from Ireland. *Foster v. Graham, (Ld Anglesey's Case,) H. 7 G. 2. Str. 962.*]

(B. 2.) Of Lands usually demised.

Vide Estates, (B. 32.—G. 4. 5.) So, if a Power be to make Leases of Lands usually demised, he cannot lease Land only once demised. *2 Rol. 262. l. 2. R. Vau. 33.*

Tho' it was demised from Year to Year, for so many Years, or for three Lives: for it was but one single Contract. *R. 2 Rol. 262. l. 3.*

If a Power be, *to lease all, or any of the Premises, which at any Time heretofore have been usually letten, reserving the Rents now paid, or more*; a Demise of Lands, not leased within twenty Years, is not within the Power, tho' demised. *Temp. Eliz. R. Vau. 33.*

If a Power be to lease, rendring the antient Rent, he cannot lease Lands never demised; for no antient Rent can be reserved. *R. Mo. 198. Per Vau. 35. R. 2 Mod. Ca. 250, 381.*

But he may lease Lands demised two or three Times. *R. 2 Rol. 261. l. 50. Vau. 33.*

[Settlement of Lands to the Use of Husband for Life, then to the Wife for Life, Provifo, that they during their joint Lives, and the Survivor in Possession, may make Leases of Premises, *at the yearly Rents the same are now let at*. The Wife marries second Husband, and they demise the capital Mansion-House and demesne Lands, never before leased. *R. per B. R.* that this is a void Lease; and *dubitatur*,

dubitatur, whether she could lease on her second Marriage. *Bagot v. Oughton*, P. 10 G. Fort. 332.]

So, if a Power be to make Leases, so that he do not lease the *Demesne* Lands of the Manor, he cannot make Leases of Copyholds; for they are Part of the *Demesnes*. Per 3 J. *inter Winter and Loveday*; *Rookby cont.* for it seemed to him, that the Exception extends only to Lands in his own Occupation. *Sal. 537.* (1 *Ld. Ray.* 269.)

But a Lease may be of the Rents or Services of a Manor; for they are not Part of the *Demesnes*. Per *Holt inter Winter and Loveday.* (1 *Ld. Ray.* 270. *Sal.* 538.)

(B. 3.) Where the antient Rent is reserved.

So, if a Power be to make Leases, so that the antient Rent be reserved, if he does not reserve the antient Rent, the Lease will be void. *Vide Post*, (C. 6.)

And therefore, if he, not having Counterparts of the antient Leases, leased all his Lands antiently demised, rendring the antient Rents, without mentioning what Lands, and what Rents, in particular; it will be void. Per *Cowper, and Trevor, Holt cont.* 2 *Ver.* 534, 544. *Eq. Ca.* 14, 15. *

* 2d Part of
2 *Mod. Ca.*

But, if a Power be to lease the Premises, or any Part of them, so that such Rent or more be reserved, as was paid within two Years before; he may lease Lands not demised *omnino*, reserving such Rent as he pleases; for the Intent appears, that all may be demised. *R. 2 Rol.* 262. l. 10.

So, if a Power be to lease the Premises, (which consist of Land, a Rectory, &c.) or any Part of them, reserving so much *per Acre*; he may demise the Rectory, tho' there cannot be a Reservation of such a Sum *per Acre.* *R. 1 Vent.* 294. 2 *Lev.* 150.

If a Power be to demise, rendring 12s. *per Ann.*; a Lease rendring *so much as ought to be paid by the Power*, without saying how much, will be good. *R. 2 Ver.* 533.

If a Power be to make Leases, rendring such Rent as he pleases; a Lease without Rent will be good. *R. Skin.* 427, 8.

If a Lease by Tenant for Life reserves the Rent to him and his Heirs, it will be good. *R. 8 Co.* 70. b.

If a Lease be of such Land *inter alia*, reserving the antient Rent *proinde*, the Word *proinde* shall be referred to the Land mentioned. *R. 1 Vent.* 340.

[The Successor must not be prejudiced in point of Remedy, or any Circumstance of full Enjoyment. *Taylor v. Horde*, H. 30 G. 2. 1 *B. M.* 60.]

[If the ancient Rent is to be reserved, it must be with all beneficial Circumstances; and *specifically*, that Remainder-man be put to no Difficulty in avowing; otherwise void against him, tho' good against Owner of the Inheritance. *Ibid.*]

[The Lease intended by every Power of leasing, is the *usual Husbandry Lease*, reserving a Rack-rent. *Ibid.*]

(B. 4.) For Lives, or Years.

If the Power be to make Leases for three Lives, or 21 Years, he cannot make a Lease for 99 Years, if three Lives so long live; for the Power shall be taken strictly. *R. 8 Co.* 70. b. 2 *Rol.* 260. l. 40.

But a Power to make Leases, not exceeding three Lives or 21 Years, warrants a Lease for Years, if three Lives so long live; for that does not exceed three Lives. *R. 8 Co.* 70. b. 2 *Rol.* 260. l. 45.

So a Power to make Leases for three Lives, or 21 Years, or for any Term upon one, two, or three Lives. *R. 3 Mod.* 269.

So a Power to make Leases for three Lives, or for 30 Years, or for any Number of Years determinable upon three Lives, warrants a Lease for 30 Years absolute; for the Repetition of the Words [*or for*] makes distinct Clauses. Per 3 J. *Rookby cont. Winter and Loveday, Sal.* 537. (1 *Ld. Ray.* 269.)

If

If a Power be to make Leases, rendring the Rent now paid, or more, for 21 Years, or for Years, determinable upon one, two, or three Lives in Possession, *so long as the Lessees duly pay the Rents and perform the Conditions*; that Clause is a Limitation, which determines the Lease, if the Rent, &c. be not paid, tho' there be no Demand of the Rent. *R. Vau. 32.*

[If Tenant for Life in Possession, has a Power to limit Lands to his Wife for Life, he cannot make a Lease of them for 99 Years, determinable on her Death. *Rattle v. Popham, M. 8 G. 2. Str. 992.*]

(C) How it shall be executed.

(C. 1.) What shall be a good Execution.

(C. 1.)
Tho' more
join in the
Execution,
than need.

Vide Chancery,
(4 H. 1, &c.)
—Uses, (L.
4, 5.)

IF a Power be to a Woman to make Leases, and she takes Husband, a Lease by the Husband and Wife, is well executed. *R. 1 Sid. 101. R. cont. Ca. Ch. 18. R. Acc. 1 Rol. 329. l. 35. Acc. where it is a naked Power. 3 Sal. 276.*

So, if an Use be to *A.* for Life, and afterwards to *B.* his Son, in Tail, with a Power for *A.* to charge the Land with 2000*l.* for Portions; if *A.* and *B.* by Deed charge, &c. it will be good. *R. 1 Lev. 150.*

(C. 2.)
Or more be
done, than
the Power
requires.

So, if a Man, who has a Power, does all required by his Power, and more, it will be good for so much as was within his Power; as, if a Tenant for Life, who has a Power to make a Jointure, covenants to stand seised to the Use of him and his Wife for their Lives, and then to the Issue of their Bodies; it is a good Execution of the Power to make a Jointure. *R. 2 Lev. 60. Dub. 1 Leo. 148.*

[If a Man has Power to appoint Lands to his Wife for her natural Life, and he by Deed grants them to Trustees, for the Use of his Wife for Life, and then to the Use of the Heirs of her Body, the Deed is void to raise any Use, but it shall enure as an Appointment. *Peters v. Morehead, M. 4 G. 2. Fort. 339.*]

If a Man, having Power to make Leases for ten Years, leases for twenty Years, it will be good in Equity for ten Years. *R. Ca. Ch. 23. Semb. cont. per Raymond, Ch. 7.*

(C. 3.)
Or if it be
done by more
Deeds.

So, if a Man pursues all the Requisites within his Power, tho' he does it by more Deeds than are necessary, it will be good: As, if a Man has a Power to charge Land with 2000*l.* by his Deed, for Portions, &c. If he makes the Charge by Lease and Release, it will be good, tho' the Power says, *by Deed*, and it be executed by two Deeds. *R. 1 Lev. 150. Hard. 395.*

If done by Deed, to declare the Uses of a Fine, and a Fine pursuant. *R. 1 Vent. 279. Ray. 239. 2 Lev. 149.*

So the Execution of a Power may be without Deed, where that is not expressly required; for the Interest arises out of the Estate. *R. Sal. 467.*

[If a Man has a Power to appoint to a Wife for her Life, for or in the Name or in Lieu of Jointure, all or any Part of Lands, it is not necessary it should be executed all at once. *Zouch v. Woolston, P. 1 G. 3. 2 B. M. 1136.*]

[If previous to his Marriage, he by Indenture doth according to the Power to him given, and by Virtue thereof, and of all and every other Power, appoint to Trustees Part of the Lands to the Use of his Wife for Life, *for and in the Name and in Lieu of Jointure*, and there is a Proviso, that if she does not on three Months Request release her Dower, this to be void, which Proviso he releases, he may appoint other Part of the Lands as Augmentation of Jointure. *Ibid.*]

(C. 4.)
Or it be executed
without
mentioning
his Power.

So, if a Man executes a Power by Deed, without taking Notice of his Power, it will be good, where the Deed has no Operation, if it be not in Execution of his Power: As, if a Man settles two Parts of his Land, and afterwards makes a Feoffment of the third Part held in *Capite*, to the Use of such Person, &c. as he shall appoint by his Will, and afterwards devises that third Part, without

without Reference to the Feoffment; it will be a good Declaration of the Uses of the Feoffment; for otherwise, the Devise will be void, two Parts being settled before. *R. 6 Co. 18. a.*

So, if a Man has a Power to charge Lands with the Payment of 2000*l.* and he, being Tenant for Life, with his Son Tenant in Tail, by Lease and Release, without Reference to the Power, conveys the Land for raising of the Money, it will be good. *R. 1 Lev. 151. Cont. per Bridgman, afterwards in Chancery. 2 Leo. 152. in Marg.*

So, if the Deed has not a full Operation, except where it is in Execution of his Power: As, if Tenant for Life makes a Lease, without taking Notice of his Power, it shall be an Execution of his Power to make Leases; for otherwise the Lease will not have an effectual Continuance. *R. 1 Vent. 228.*

If a Devisee for Life has Power to sell the Reversion, and he sells by Bargain and Sale inrolled, without taking Notice of the Power; it shall be an Execution of the Power; for otherwise, nothing would pass but his Estate for Life. *R. 1 Rol. 329. l. 45. Jon. 327.*

So, if a Man, who has a Power, does not observe all Circumstances required by Law, for making such Estate, yet, it may be a good Execution of his Power; for the Estate made by Virtue of the Power, arises out of the first Estate upon which the Power was created: As, if Tenant for Life, with Power to make a Jointure, covenant to stand seised to the Use of his Wife, it will be a good Jointure. *Ray. 239.*

(C. 5.)
If it be executed by a Conveyance tantamount, tho' not pursuant to the Letter of the Power.

If Tenant for Life, who has a Power to make Leases for Lives, makes a Lease for Life without Livery, it is good, and better than if there was Livery. *Per Hale, 1 Vent. 281. 2 Lev. 149.*

So, it is good, if there be also Livery. *1 Vent. 281. 2 Lev. 149.*

[A Power to make Leases for Years determinable on Lives, may be executed by a Covenant to stand seised. *Right v. Thomas, M. 4 G. 3. 3 B. M. 1441.*]

If a Man has a Power to make an Estate to his Children, and he grants a Rent-Charge to them, by his Will, out of the same Estate, it will be good. *R. 3 Ca. Ch. 69.*

If he has Power to make it by Writing, signed before two Witnesses, and he grants a Rent by his Will, executed before two Witnesses; tho' it be not a good Execution of the Will, for Want of three Witnesses, within the *St. 29 Car. 2.* yet it shall take Effect as an Execution of the Power. *R. 3 Ca. Ch. 69.*

If an Executor, who has only Power to sell, makes a Feoffment, it will be a good Execution of the Power. *1 Rol. 330. l. 1*

If a Wife has Power to dispose by Writing under Hand and Seal; by Writing in Nature of a Will, signed and sealed, will be good. *R. Cro. Car. 376.*

So, if it be by Writing under Hand and Seal, delivered in the Presence of three Witnesses; by Will signed, sealed and published before three Witnesses, is sufficient, tho' Delivery is required by the Power. *Hob. 312. 1 Vent. 280.*

(C. 6.) What not.

But, a Power ought to be strictly pursued; and therefore, if all Circumstances are not observed, it will be a void Execution of it: As, if a Power be to make Leases, rendring the antient Rent, a Lease which does not reserve it, will be void: As, if he leases two Acres with other Land, and reserves the Rent of the two Acres for the Whole. *R. 2 Jon. 111. Vide Ante, (B. 3.)—Estates, (G. 5.)*

[Where the Power is only to revoke, no new Uses can be declared under that Power, though the Party might have done it by a new Conveyance, or by new Grant or Covenant on Consideration, in the same. *Anon. P. 10 G. C. B. Str. 584.*]

[If *A.* surrenders Copyhold to Trustees to the Use of his Wife for his Life, then to pay the Profits to his Children equally, then to such Uses as he shall

appoint, and for Want of Appointment to B. and by his Will gives all the Rest of his Estate, Real and Personal, of what Nature, Kind and Quality whatsoever, to C. in bar of what he may claim by Custom or otherwise; it is not a good Execution, for though he need not recite the Power, he must mention the Estate. *Semb. Ex parte Caswall, T. 1744. 1 Atkyns 559.*

So, if a Power be to revoke under Hand and Seal, a Revocation under Seal only is not sufficient. *Pal. 112.*

[If A. devises the Income and Produce of 1000*l.* South-Sea Stock to B. for Life, with a Power to dispose of 400*l.* of it by Writing before three Witnesses, and for Want of Appointment gives the 400*l.* to a Charity, and B. makes his Will, and after Legacies gives the Rest and Residue of his Personal Estate to, &c. this is not a good Execution of the Power; and Parol Evidence shall not be allowed to prove that B. intended the 400*l.* should pass. *Molton v. Hutchinson, 1739. 1 Atkyns 558.*]

[If a Wife has a Power by Settlement before Marriage to appoint Money by her Will in Writing, or other Writing under Hand and Seal, attested by two Witnesses, and dies, leaving a Paper in her Hand-writing, but not signed, sealed, nor attested; this is not a good Execution. *Ross v. Ewer, T. 1744. 3 Atkyns 156.*]

So, if a Man has a Power to charge 2000*l.* upon Land, and he, by Lease and Release, conveys in Fee, upon Condition to be void, upon Payment of 2000*l.* and Interest; it shall be void for the Whole: For he had not Authority to raise more than 2000*l.* and it shall not be good for Part, and void for the Residue at Law; for the Power is intire, and so ought to be the Execution of it. *R. 1 Lev. 151. Hard. 398. Cont. R. Sal. 538.*

[If A. in his Son B.'s Marriage-Settlement covenants to stand seized, after other Remainders, to the Use of Children of the Marriage, in such Manner, for such Estates in Fee or Tail, and upon such Conditions as B. shall appoint, and in Default, &c. over; and B. by Will appoints to his eldest Son C. and the Heirs of his Body for ever, and for Want of such Issue, to the right Heirs of B. this is a void Appointment; for he has not appointed the Whole among the Children of the Marriage, giving only Estate-tail to C. and the Fee to his own right Heirs, who might not be Children of that Marriage, and the Contingent Remainder to such Children is not defeated. *Goodtittle v. Weal, H. 8 G. 3. 2 Wils. 369.*]

If he has Power to make a Lease for 31 Years for raising Portions, and he makes a Bargain and Sale in Fee. *Semb. Hard. 413.*

But if a Man, having a Power of Revocation, makes a Mortgage in Fee; it shall be a Revocation for the Mortgage only. *1 Ver. 141, 182.*

[Powers shall not be exceeded, nor their Conditions evaded, but shall be strictly pursued in Form and in Substance, and all Acts done under a special Authority, not agreeable to it, nor warranted by it, are void. *Taylor v. Horde, H. 30 G. 2. 1 B. M. 60.*]

[It is no Lease, unless Landlord and Tenant are bound in mutual Stipulations. *Ibid.*]

[If the Lessee never executed Counterpart, nor entered, nor covenanted to pay Rent, nor consented, nor accepted Lease, nor was in Possession of it, he never was bound by it, and such Lease is no Execution of a Power, especially, if there is no Clause of Re-entry. *Ibid.*]

[Every fraudulent, unfair prejudicial Execution of a Power in respect of those in Remainder is void. *Ibid.*]

[But it is good, though made in Trust for him who executes the Power, provided the legal Tenant be bound in all requisite Covenants and Conditions. *Ibid.*]

(D) How it shall be destroyed.

Vide Uses,
(L. 1, &c. 6.)

IF Tenant for Life, who has a Power to make Leases, Jointure, &c. levies a Fine, suffers a Recovery, or makes a Feoffment, by which his Estate is forfeited, his Power shall be extinct. *R. 1 Vent. 226, &c. 3 Sal. 276.*

So, if Tenant in Tail, who has Power to make a Jointure, &c. suffers a Recovery; his Power shall be extinct. *R. 2 Lev. 60.*

So, if he releases his Power to the Tenant of the Freehold. *R. 1 Co. 113. a. 174. a. Vide Uses, (L. 6.)*

So a Power in Gross, not annexed to an Estate fully, may be destroyed by Fine, Feoffment, &c. as, if Tenant for Life has Power to make a Lease to commence after his Death. *Hard. 415.*

So, by a Release with apt Words. *Hard. 416.*

(E) When it shall not be destroyed.

BUT if a Power be given to a Lessee for Years, and his Assigns, to make Leases for Lives; such Power goes to his Executor, tho' only an Assignee in Law. *R. 2 Jon. 110. (Vide Ante, (A. 1.))*

Or, to the Assignee of the Executor. *(R. 2 Jon. 110.)*

But a Power to an Executor to make Leases, does not extend to the Executor of his Executor. *2 Jon. 110.*

So, if Tenant for Life, with Power to make Leases, Jointure, &c. makes a Conveyance, which does not operate by Transmutation of the Possession, but only by Limitation of the Use, the Power shall not be destroyed: As, if he covenant to stand seised to the Use of another in Fee. *Dub. Hard. 413.*

Or, make a Bargain and Sale to another in Fee by Indenture inrolled. *Semb. Hard. 413.* And if it be a Power in Gross. *R. Hard. 417.*

Tho' the Tenant for Life had also the Remainder in Fee, which passed by the Bargain and Sale: For, till the Remainder comes *in Esse* in Possession, the Estate by the Power is not touched. *R. Hard. 416.*

So a Power in Gross which does not take Effect till the Estate of him, who had the Power, determines, shall not be destroyed by Alteration of the Estate; as, if Tenant for Life, with such Power, grants *totum Statum*. *Per Hale, Hard. 416.*

So, if *A.* settles Land to the Use of himself for Life; with Power to make Leases, and afterwards to *B.* upon such Trust as he shall afterwards declare; if *A.* declares the Trust for Payment of Debts, and afterwards leases at a small Rent, the Lease is not defeated by the Execution of his Power; for it is precedent to it. *R. Skin. 427.*

So an Act by a Stranger does not destroy a Power: As, if Bargainee of Tenant for Life with Power, &c. enfeoffs him in Fee, the Power is not thereby destroyed. *Semb. Hard. 413, 417.*

So, if Tenant for Life, with a Power in Gross, be disseised, the Power is not destroyed; for the Right of the Tenant for Life supports the Power, and if he makes a Lease pursuant to the Power, and afterwards re-enters, it will be good. *R. Hard. 417.*

If a Man having a Power annexed to his Estate, charges his Estate, and afterwards executes his Power, the Estate which arises by the Execution of the Power shall be subject to the Charge during the Estate: As, if Tenant for Life, with Power to make Leases, grants a Rent-Charge, and afterwards makes a Lease, the Lessee shall take, subject to the Rent-Charge during the Life of the Lessor. *Per Hale, Hard. 415.*

(F) How the Pleading shall be.

IF a Man pleads an Act done, pursuant to a Power, he ought to shew the Power to be strictly pursued in all Circumstances.

If he says, that it was executed in the Presence of three credible Witnesses, he ought to shew who were the Witnesses by Name. *D. 1 Co. 111. a.*

POLICY OF ASSURANCE.

Vide Merchant, (E. 9, 10.)

P O L L S.

Vide Challenge, (C. 1, 2.)

P O L Y G A M Y.

Vide Justices, (S. 5.)

P O N E.

Vide Pleader, (3 K. 6.)

P O N T A G E.

Vide Toll.

P O O R.

Vide Forma Pauperis.—Justices of Peace, (B. 64, &c.)—Uses, (N. 1, 7, 10.)

P O P I E.

Vide Ecclesiastical Persons, (B. 1.)—Justices, (K. 9.—Popery.

P O P E R Y.

(A) The Authority of the Pope ; how usurped.

(A. 1.) In giving the Pall.

WHAT Authority the Pope had in this Kingdom, *Vide Ecclesiastical Persons, (B. 1.)*

Before the Time of *William the Conqueror*, the Pope had not any Jurisdiction allowed within the Realm among the *Britons* or *Saxons*. *Dav. 87, 88.*

But in the Time of *William the Conqueror*, the Pope usurped upon the *Bishops*, to take their *Palls* from him. *Dav. 89.*

And if an *Archbishop*, or *Bishop* did not do it, he was deposed. *Ibid.*

(A. 2.) In sending his Legates.

So, in the Time of *William the Conqueror*, the Pope sent his Legates to *England*. *Dav. 89.*

But in the Time of *H. 1.* It was allowed that the *Archbishop of Canterbury* should be *Legatus natus*. *Dav. 90.*

And

And that no other Legate should be sent by the Pope, without the King's Request. *Dav. 90. b.*

(A. 3.) In receiving Appeals.

So, in the Time of *Will. 2.* and before, No Appeal to *Rome* was admitted. *Vide Post, (B. 2.) Dav. 89. b.*

But, in the Time of *Stephen*, Appeals to *Rome* were usurped. *Dav. 90.*
And by Canon in the Synod of *London*, before *H. Bishop of Winchester*, the Pope's Legate, it was decreed, that an Appeal should lie from a Provincial Council to the Pope. *Dav. 90. b.*

(A. 4.) In exempting of Clerks.

So, in the Time of *H. 2.* The Pope usurped the Exemption of Clerks from the Secular Power. *Dav. 91.*

And a Clerk indicted for Murder prayed his Clergy, and was sent to the Bishop of *Sarum*, his Ordinary, to make his Purgation; which if he did not, he ought to have been remanded to the Temporal Court: But he sent him to *Thomas Becket*, the Archbishop, and by him he was thrust into an Abbey to shelter him from Justice. *Dav. 91.*

(A. 5.) In exacting Tenths and First-Fruits.

So, by the Pope *Boniface* the 9th, or *John 22*, Payment of Tenths and First-Fruits was imposed upon all Archbishops and Bishops. *Vide Tenths, (A.—B.)*

(B. 1.) How the Usurpation of the Pope has been restrained.

HOW Provision to Benefices, by the Pope, was restrained, *Vide Provisor, (A. 2.)*

How the Ecclesiastical Jurisdiction and Supremacy of the King has been maintained, *Vide Prærogative, (D. 9, &c. 17.)*

The Kings of *England* have always disallowed the Encroachments and Usurpations of the Pope, and the Court of *Rome*.

And therefore, the Pope was not allowed to disannul the Temporal Law, by his Bull. *11 H. 4. 37.*

A fortiori, not the Statute Law. *2 Cro. 517.*

All Dispensations by him, contrary to Law, were void. *Ibid.*

So the Dissolution of a perpetual Vicarage, after the *St. 4 H. 4. 12. R. 2 Cro. 517.*

The Dissolution of a Spiritual Corporation: For, *quoad* the Corporation, it is Temporal. *Vide 2 Cro. 517.*

(B. 2.) In Appeals to *Rome*.

So *William Rufus* rejected and refused all Appeals to *Rome*. *Dav. 89. b. Vide Ant, (A. 3.) 4 Inst. 341.*

And tho' King *Stephen* allowed them, yet, by the Constitution of *Clarendon*, in the Time of *H. 2.* it was ordained, That all Appeals should be from the Archdeacon to the Ordinary, from him to the Metropolitan, from him to the King. *Dav. 91. 4 Inst. 340.*

And by a Canon, That no Decree of the Pope should be executed within the Realm, upon Pain of Imprisonment and Confiscation of Goods. *Vide Dav. 91.*

And now, by the *St. 24 H. 8. 12.* If any purchase or procure, in any Cause Testamentary, Matrimonial, of Divorce, or Tithes, from the See of *Rome*, or other foreign Court, any foreign Process, Appeal, Sentence, &c. or execute the same, he shall incur a *Præmunire*.—So by the *St. 25 H. 8. 19.*

And if any Prelate, Pastor, &c. by Occasion of any Appeal, &c. refuse to administer Sacraments, Divine Service, &c. he shall have a Year's Imprisonment, and make Fine and Ransom at the King's Will.

And this Act, being repealed by the *St. 1 & 2 Pb. & M. 8.* was afterwards revived by the *St. 1 El. 1.*

(B. 3.) By abolishing the Power of the Pope.

By the *St. 25 H. 8. 20.* No Archbishop, or Bishop, shall pay Annates, Pension, or other Sum of Money to the See of Rome, on Pain of losing all his Goods, and the Possessions of his Bishoprick.

Nor shall send there, or procure any Bulls, Breves, Palls, &c. but the same shall cease: By the *St. 28 H. 8. 16.* shall be void.

So, by the *St. 25 H. 8. 21.* No Person in the King's Dominions shall pay any Pension, Cense, Peter-pence, or other Imposition to the Use of the Pope, or See of Rome.

And no Visitation of any Monasteries, Colleges, &c. shall be made by Authority of the See of Rome. By the same *St. f. 20.*

And tho' all Statutes for abolishing the Authority of the Pope were repealed by the *St. 1 & 2 Pb. & M. 8.* those Statutes were afterwards revived by the *St. 1 El. 1. 4 Inst. 325.*

And by the *St. 1 El. 1.* No foreign Prince, Person, Prelate, &c. shall use any Power, Jurisdiction, Authority, &c. within any of her Majesty's Dominions, but the same shall be abolished for ever.

All Jurisdiction and Authority of the Pope is now utterly abolished.

So all Jurisdiction derived from him.

And therefore, the concurrent Jurisdiction of the Archbishop of Canterbury, within an Inferior Diocese, is now taken away; for he had it not as Archbishop, but as *Legatus natus*, and therefore it was derived from the Pope.

But the *St. 28 H. 8. 16.* which prohibits the using of a Bull of the Pope, &c. does not extend to alledging it as an Inducement to the Demand of a Pension in Pleading. *R. 2 Lev. 251.*

(B. 4) By a Penalty upon the Maintainers of his Authority.

Vide Præmunire, (B)

So, by the *St. 1 El. 1.* If any in the Queen's Dominions, by writing, printing, teaching, &c. by express Word or Act, advisedly and directly maintain, &c. the Authority, &c. Spiritual or Ecclesiastical, of any foreign Prince, Prelate, &c. heretofore usurped, &c. for the first Offence he shall forfeit all his Goods Real and Personal; and if they are not worth 20*l.* shall besides suffer a Year's Imprisonment without Bail. And all the Benefices or Ecclesiastical Promotions of any spiritual Person so offending, and thereof convict and attain, shall thereby be void; for the second Offence, he shall incur a *Præmunire*; for the third, shall be guilty of High Treason.

And by the *St. 5 El. 1.* For every such Offence, being indicted for it within a Year, he shall incur a *Præmunire*.

If a Subject imports Books written out of the Realm in Support of the Supremacy of the Pope, knowing the Effect of them, and sells or utters them secretly to Persons consant of the Contents, he shall be within this Statute. *R. by all the J. of B. R. and C. B. and the Ch. Baron, (except three.) Dy. 282. a.*

So, if any one receives and reads such Book, and afterwards, by speaking in Conversation, allows it. *R. Dy. 282. a.*

But by the *St. 1 El. 1.* None shall be impeached for an Offence by preaching, teaching, or Words, unless within half a Year; and if imprisoned for such Cause, and not indicted in half a Year after the Offence, shall be set at Liberty.

So the receiving and reading a Book, written in Support of the Supremacy of the Pope, without more, is not within the *St. 5 El. 1.* *R. Dy. 282. a.*

Vide Justices, (K. 9.—X. 1.)

(B. 5.) By the Dissolution of Monasteries, and by Oaths.

How the Power of the Pope was restrained by the Dissolution of Monasteries, &c. *Vide Hospital.—Monastery.*

How, by the Oaths of Allegiance and Supremacy, *Vide Allegiance*, (B. 2, &c.) —*Justices of Peace*, (B. 17, 24.) —*Officer*, (K. 7.)

(B. 6.) By the Restraint of Reconciliation to the Pope, and of the Erection of Seminaries.

As to restraining the Reconciliation, *Vide Justices*, (K. 9.)

By the *St. 1 Jac. 4.* Any under the King's Obedience, who shall go, or shall send any Child, or other Person under his Government, beyond the Seas, out of the King's Obedience, to enter into, or be resident in any College, Seminary, &c. or repair to the same to be instructed, &c. in the Popish Religion, shall forfeit 100*l.* to his Majesty.

And the Person, so going or sent, in respect of him or herself only, shall be disabled to inherit, purchase, take, or enjoy any Lands, &c. Goods, Debts, Legacies in any of his Majesty's Dominions. *Vide Post*, (B. 7.)

So, by the *St. 3 Car. 1, 2.* Any who shall go or send, &c. to any College, Seminary, &c. or any private Popish Family, where he shall be by any popish Person instructed, &c. or shall cause to be sent any Money, &c. for the Maintenance of any Child gone or sent, or by Way of Alms, &c. for any Abbey, Nunnery, School, &c. shall be disabled to sue in Law or Equity, to be Committee of a Ward, Executor or Administrator, capable of a Legacy, or Deed of Gift, to bear any Office, shall forfeit all his Goods and Chattles, and all his Lands of Freehold during Life.

So, by the *St. 3 Jac. 5.* If the Children of any Subject (not Soldiers, Mariners, Merchants, their Apprentices or Factors) to prevent good Education in England, or other Cause, shall be sent, or go beyond Sea, without Licence of the King, or six of the Privy Council (whereof the principal Secretary to be one) under their Hands and Seals, such Child, &c. shall take no Benefit by any Gift, Conveyance, Descent, Devise, &c. of any Lands, Leases, Goods, &c. *Vide Post*, (B. 7.)

And a Person sending, &c. without such Licence shall forfeit 100*l.* one third to the King, one third to him who sues, &c. one third to the Poor.

So a Person, already gone without Licence, &c. who shall not take the Oath in six Months after Return, shall take no Benefit by any Gift, &c. *By the same Statute.*

So, by the *St. 27 El. 2.* All Jesuits, Seminary, or other Priests ordained by Authority from the See of Rome, shall depart the Realm; and if any born in the Queen's Dominions come into, or remain there, such Offence shall be High Treason.

And if any receive, relieve, &c. any such, knowing him to be so, it shall be Felony.

And any who directly, or indirectly, sends Relief to such, or to any Seminary, or to any there, incurs a *Præmunire*.

And every Subject, knowing such Jesuit, Priest, &c. to be in the Queen's Dominions, and not discovering it to a Justice of Peace in twelve Days, shall make Fine, and be imprisoned at the Queen's Pleasure: And a Justice of Peace not informing, &c. some of the Privy Council, &c. in 28 Days, forfeits 200 Marks.

But this Act extends not to a Jesuit, &c. who in three Days after his Arrival submits to an Archbishop, Bishop, or Justice of Peace, &c. *By the same Statute.*

So, by the *St. 35 El. 2.* A Jesuit, &c. suspected, being examined by any having Authority, and refusing to answer directly, whether Jesuit or not, shall be committed without Bail, till he make direct Answer.

The

The Indictment for Treason ought to say, that he was born within the King's Dominions.

That he was ordained by the Authority of the See of Rome.

But it need not say, at what Place born, or ordained.

A Secretary of State, or the Court of B. R. may examine any, whether he be a Jesuit, &c. 1 Sal. 351. Dub. Skin. 369.

And ought to make a Conviction, if he refuses. 1 Sal. 351.

But a Commitment generally, till delivered by Law, will be ill. R. 1 Sal. 351. Skin. 369.

(B. 7.) By Disability.

(B. 7.)
To take
Lands or Te-
nements.

By the St. 1 Jac. 4. A Person going, or sent into a College, Seminary, &c. (Vide Ante, B. 6.) shall be disabled in respect of him or herself only, and not of his Heirs, or Posterity to inherit, purchase, take or enjoy any Lands, Tenements, Goods, Debts, Legacies, &c.

And by the St. 3 Jac. 5. A Child going, or sent, without Licence, &c. (Vide Ante, B. 6.) shall take no Benefit by any Gift, Conveyance, Descent, Devise, &c. of any Lands, &c. Leases, Goods, till he, being of eighteen Years of Age, take the Oath 3 Jac. 4. before a Justice of Peace. And in the mean Time the next of Kin, who shall be no Recusant, shall have the said Lands, &c. Goods, &c. But upon Conformity, by taking the Oaths and Sacraments, shall account for the Profits, &c. and restore the Goods, &c. to him or her so conforming.

By the St. 3 Car. 1. 2. Any who shall go or send, &c. (Vide Ante, B. 6.) being convict on Information, shall be disabled to sue, be Committee of a Ward, Executor or Administrator; shall not be capable of any Legacy, or Deed of Gift, or Office; And shall forfeit all his Goods and Chattles, all his Lands, Tenements, Rents, Annuities, Offices, and Estates of Freehold, for his Life. Provided, None who conforms to the Church of England, and receives the Sacrament within six Months after Return, shall incur the Penalties; but shall have his Lands restored during his Conformity.

* 2d Part of
2 Mod. Ca.

But by the St. 1 Jac. 4. A Person sent to a Seminary takes the Lands, and the Estate vested in him: For the Protestant Heir has only the Pernancy of the Profits. Per 2 J. Hob. 73. Eq. Ca. 34. *

And such Person may make a Bargain and Sale; and thereby take the Lands out of the Hands of the Heir. Hob. 74.

So, by the St. 11 & 12 W. 3. 4. A Person educated in the Popish Religion, or professing the same, who shall not, in six Months after the Age of Eighteen, take the Oaths, and subscribe the Declaration by the St. 30 Car. 2, &c. shall, in respect of himself only, and not of his Heirs or Posterity, be disabled to inherit, or take by Descent, Devise, or Limitation, in Possession, Reversion or Remainder, any Lands, &c. And during his Life, till he take the Oaths and subscribe, &c. his next of Kin, who is a Protestant, shall enjoy the Lands, &c. without Account for the Profits; but for wilful Waste, shall answer treble Damages, &c.

And from 10 Apr. 1700, Every Papist, or Person professing so to be, shall be incapable to purchase in his own Name, or to his Use, or in Trust for him, any Lands, &c. and all Estates, Terms, Interests, or Profits out of Lands, made, suffered, or done to his Use, or on Trust mediately or immediately for his Benefit, or Relief, shall be void.

And this Clause was confirmed by the St. 3 Geo. 18.

[Conviction is not necessary, to prevent a Papist's devising Lands in Ireland; but parol Evidence shall be sufficient to prove he died a Papist, though he had formerly renounced and conformed. Rice v. Oatfield, P. & T. 11 G. 2. Andr. 222, 235. Str. 1095.]

If a Papist was above eighteen Years at the Time of the Act, yet he shall be disabled to inherit: For the Statute did not intend more Indulgence to Persons of full Age, than to Infants. Semb. Eq. Ca. 35. *

* 2d Part of
2 Mod. Ca.

[A Papist

[A Papist above eighteen Years and six Months at making *Stat. 11 & 12 W. 3. c. 4.* cannot take Freehold or Leasehold Estate by Will. *Davers v. Dewes, T. 1730. 3 P. W. 40.*]

[But he may take Lands by Descent, or a Share of personal Estate, by the Statute of Distributions. *Ibid. Per King C.*]

If an Estate, Term, &c. appears to be in Trust for a Papist; upon a Bill exhibited by the next Protestant Kin, he shall have an Account of the Profits from the Time of filing his Bill. *R. Eq. Ca. 146. **

[If Popish Heir make a Mortgage, the next Protestant Kin may redeem, and receive Rents and Profits till Conformity of the Heir. *Jones v. Meredith, M. 1739. Bunb. 346.*]

If a Man devises Lands to be sold for Payment of Debts and Legacies, the Residue to A. who is a Papist; the Devise of the Residue of the Money shall be considered as Land, and shall be void: Otherwise, by Payment of the Debts A. would have the Land, and the Statute would be eluded. *R. Eq. Ca. 156, 170. **

If a Devise be of a Term to a Papist, the Protestant next of Kin shall have a Decree for the Term to be assigned to him, with an Account of the Profits from the Time of his Purchase. *Eq. Ca. 146. **

[If a Lease for Lives is made to a Papist, and he commits High-treason, he forfeits Nothing, for the Lease was void. *R. per Curiam, Dissent. Foster J.* who thought he might take for the Benefit of the Crown: as if a Villain purchase, he may take for the Benefit of his Lord. *Denn v. Fearnside. M. 21 G. 2. 1 Wils. 176.*]

[But if a Papist, Tenant in Tail, conveys his Estate to a Protestant to make him Tenant of the Freehold, till a common Recovery is suffered, which is suffered accordingly, and the Recovery declared to be to the Use of the Papist in Fee, who afterwards on his Marriage by Lease and Release conveys the same to the Use of himself for Life, then to his Wife for Life, Remainder to his first and other Sons in Tail-male, with Remainders over, and Limitations to Trustees to preserve contingent Remainders; the Recovery is good, notwithstanding 11 & 12 W. 3. the Settlement good, and his eldest Son shall succeed to the Remainder in Tail, though the Father was attainted of High-treason. *Mr. Ratcliffe's Case, H. 6 G. By the Delegates, 4 against 1. Str. 267.*]

And by the *St. 3 Geo. 18.* No Sale for a valuable Consideration of any Manors, Lands, &c. by the reputed Owner in Possession, to a Protestant, merely for the Benefit of a Protestant, shall be impeached in Respect of the Disabilities by the *St. 1 Jac. 4. or 11 & 12 W. 3. 4.* unless the Person intitled to take Advantage of such Disability, before such Sale recovered the said Manors, Lands, &c. or gave Notice of his Claim, to the Purchaser, or entered his Claim at the General Sessions of the County, &c. where the Lands, &c. lie, before the Contract for such Sale, and *bonâ fide* pursued his Remedy for them. *Vide Post, (B. 12.)*

By the *Stat. 3 Jac. 4. S. 8.* The King, &c. may refuse 20 *l.* per Month, and seise two Parts in three of all the Lands, Tenements, and Hereditaments of a Person not coming to Church, &c. by Virtue of which Seisure, if the King seises two Parts of a Manor to which an Advowson is appendant, the King shall have two Turns of the Advowson, and shall present to it alone.

(B. 8.)
Or to present
to a Benefice.

So, if an Advowson be in *Gross*, the King may seise it, as two Parts of Lands, Tenements, and Hereditaments: For an Advowson is an Hereditament.

By the *St. 3 Jac. 5.* Every Popish Recusant convict, while a Recusant, and by the *St. 1 W. & M. 26.* Every one recorded for refusing to sign the Declaration 1 *W. & M. 15.* or for refusing the Oaths, or seised or possessed in Trust for him, and by the *St. 12 Ann. 2. Sess. 14.* Every Papist, or Person professing the Popish Religion, or Child of such, under Age, or any Mortgagee, Trustee, or Person any ways intrusted for such directly, or indirectly, mediately, or immediately, tho' declared in Writing, or not, shall be disabled to present or nominate to any Benefice, Prebend, or Ecclesiastical Living, School, Hospital, or Donative, or to grant any Avoidance of them: But the Presentation in twenty-

fix Counties shall belong to the Chancellor and Scholars of Oxford, and in twenty-seven Counties to the Chancellor and Scholars of Cambridge University.

Provided, their Presentation to a Benefice with Cure, to any who hath a Benefice, &c. with Cure, or shall be Non-resident sixty Days, shall be void. By the *St. 3 Jac. 5.* and *1 W. & M. 26.*

And by the *St. 1 W. & M. 26. S. 4.* If a Trustee presents, &c. without giving Notice of the Avoidance to the Vice-Chancellor in three Months after in Writing, he forfeits 500 *l.* to the Chancellor and Scholars.

By the *St. 12 Ann. 14.* The Ordinary may tender the Declaration *25 Car. 2. 2.* to any Person presenting, or, if absent, summon him, and tender it, and is required to examine on Oath the Person presented if his Patron be not, to his Knowledge, or Belief, a Papist, or any ways trusted, &c. for such; and if the Presenter refuse the Declaration, or to appear, or the Presented refuse to answer directly what he knows, hath heard, or believes touching the same, the Presentation shall be void.

And the University may exhibit a Bill to discover a secret Trust, &c. or if a *Quare Impedit* be depending, at the Request of the Chancellor and Scholars, being Plaintiffs or Defendants, the Court may examine on Oath, or by *Affidavit*, or Commission, the Patron, and Clerk, &c. and may enforce the producing of Deeds relating to such secret Trust. By the same Stat. *S. 4.*

And the University may sue a *Quare Impedit* by the Name of Chancellor and Scholars, or by their corporate Name, at their Election. By the same Stat. *S. 9.*

[The Court may direct Commission under this Statute to the Prothonotaries, or Commissioners Names to be struck by them, and Interrogatories to be settled by them; or may refuse to grant Commission, if Defendant will not agree to plead the Popery Acts only. *Barnes 2. 2. 350.*]

By the *St. 11 Geo. 2. 17.* After 6 May 1738. Every Grant, or Devise, by a Papist, or Trustee, of any Advowson, School, Hospital, or Donative, or of any Avoidance, shall be void, unless made *bona fide* for a full and valuable Consideration to a Protestant, for his own Benefit only.

And a Mortgagee, Grantee, or Devisee, &c. may be examined as by the *Stat. 12 Ann. 14.* tho' no Trust in Writing. By the same Statute.

(B. 9.)
To what
Cases the
Disability
does not ex-
tend.

But a Limitation to *A.* who is a Papist, for Life, Remainder to his first and other Sons in Tail, Remainder to *B.* who is a Protestant; the Remainder shall be good.

And *A.* takes an Estate, which supports the Remainder: For the Estate limited to him is not void intirely, tho' the next of Kin, being a Protestant, may take the Profits. *R. Eq. Ca. 34. **

So an Heir, tho' a Papist, shall take by Descent; but the next Protestant of Kin may take the Profits. *Eq. Ca. 34. **

So he shall sue in Equity to defeat a fraudulent Conveyance by his Ancestor. *Eq. Ca. 34. **

So, tho' by the *Stat. 11 & 12 W. 3. 4.* in the second Clause, No Papist shall purchase, &c. but all such Estates shall be void; and therefore, a Devise to him, being a Purchase, is void; yet if a Devise be to *A.* under eighteen, educated as a Papist, who in six Months after eighteen conforms, &c. *A.* shall take, and the Inheritance vests in him in the mean Time. *R. Eq. Ca. 156, 180. **

* 2d Part of
2 Mod. Ca.

So, if an Estate by Devise be disposed to an Heir at Law in a particular Manner, it is not a Purchase by him, and void: For it comes to him in Lieu of an Estate which otherwise would have descended. *Eq. Ca. 170. **

So, if a Papist Tenant in Tail suffers a Recovery, and declares the Use to himself and his Heirs; it is not a Purchase within the *St. 11 & 12 W. 3. 4.* But a new Modification of his former Estate. *R. Eq. Ca. 173. **

So a Papist may be Tenant by the Curtesy, or in Dower; for such Tenant is not a Purchaser. *Eq. Ca. 173. **

So, if a Papist levies a Fine to bar the Right of another, he is not thereby a Purchaser. *Eq. Ca. 175. **

Or settles his Estate with a Power of Revocation, and afterwards revokes. *Eq.* 2d Part of 2 Mod. Ca. Ca. 175. *

So, by the *St. 11 Geo. 2. 17.* Papists conforming, taking the Oaths, &c. and subscribing the Declaration 30 *Car. 2.* and Protestants claiming under them, shall be freed from the said Disabilities, unless the next of Kin shall have recovered by Judgment or Decree six Months before, or unless he return to the Popish Religion.

[If there is a Devise of Lands to Trustees to the Use of the second Son of *A.* (which second Son is a Papist) Remainder to the third, &c. Sons of *A.* one of whom is not a Papist, Remainder to the Sisters of Testator, and if *A.* is still living, the Sisters are not intitled to the legal Estate, nor can maintain Ejectment. *Marwood v. Darrel, H. 8 G. 2. B. R. H. 91.*]

(B. 10.) By registering the Estate.

So, by the *St. 1 Geo. 55.* A Papist, not taking the Oaths and subscribing the Declaration 30 *Car. 2.* in six Months after full Age, and having an Estate in Lands, &c. shall register such Estate and Interest, &c. in six Months after the Time for taking the Oaths, and his Name, and at what Rent let, or Fine paid, and in what Place they lie, and in whose Possession, &c. in a Book kept by the Clerk of the Peace, in the County where the Lands lie; Or in Default, &c. shall forfeit the Fee of such Lands, &c. not registered; if he, or any in Trust, have the Fee; otherwise, the Value of the Inheritance.

And the Owner's Name shall be subscribed to such Register, in the Presence of two Justices of the Peace.

And Persons beyond Sea shall have twelve Months longer Time.

By the *St. 3 Geo. 18.* The Time of registering is enlarged till 20 Oct. 1717. and by the *St. 3, 6, 9. and 11 Geo. 2. 11.* till 29 Sept. 1738. By the *St. 12 Geo. 2. 18.* enlarged till 28 Nov. 1739.

And if a Manbr lie in two Counties, the Register shall be in the County where the Manor House is.

(B. 11.) By Sale, &c. not inrolled.

By the *Stat. 3 Geo. 18.* No Manors, Lands, &c. or Interest therein, or Rent, &c. out of them, shall pass from Papists, &c. by Deed, unless inrolled in the King's Court of Record at *Westminster*, or in the County where the Lands lie, &c. in six Months after the Date; or by Will, unless inrolled in six Months after the Death of the Testator.

But by the *St. 10 Geo. 4.* it is sufficient, if a Deed or Will made after 29 Sept. 1717. be inrolled on or before 29 Sept. 1724. or by the *St. 3 Geo. 2. 29.* before 29 Sept. 1731. Or by the *St. 8 Geo. 2. 25.* before 29 Sept. 1735.

But by the *St. 1. Geo. 55.* A Purchaser *bonâ fide* for a just and valuable Consideration, before Conviction, or Ejectment brought for the Forfeiture, and not knowing of the Default in registering, shall not be prejudiced by it.

(B. 12.)
When Default of registering does not prejudice.

So, by the *Stat. 3 Geo. 18.* No Sale for a full and valuable Consideration, by a Papist the reputed Owner, or in Receipt of the Rents, &c. of any Lands, &c. or Interest out of them, to a Protestant, for the Benefit of a Protestant, shall be avoided on Pretence. of the Disability of him, or any under whom he claims, unless the Person taking Advantage of such Disability have recovered before Sale, or given Notice of his Claim to the Purchaser; or, before the Contract for the Sale, shall have entred his Claim in open Court at the Quarter Sessions of the Peace for the County, and *bonâ fide* pursued his Remedy. *Vide Ante, (B. 7.)*

So, by the *St. 6 Geo. 2. 5.* No such Sale shall be avoided by Reason the Deed, or Will, thro' which the Title was derived, shall be avoided, so as no Advantage hath been taken for want of Inrolment before the Purchase made, and so as the Purchaser had no Notice before his Purchase, that the Maker of the Deed or Will was a Papist, and no Judgment, or Decree, hath been had for want of Inrolment.

Vide Justices of Peace, (B. 14.)

P O R T.

Vide Navigation, (E.)

Cinque-Ports.

Vide Abatement, (D. 3, 5.)—Franchises, (E. 1, &c.)

P O R T A G E.

Vide London, (K. 2.)

P O R T I O N.

Vide Chancery, (2 M. 10.—3 Z. 1, &c.—4 W. 24.)

P O R T M O T E C O U R T.

Vide Courts, (I.)

P O S S E C O M I T A T U S.

Vide Viscount, (C. 2.)

P O S S E S S I O N.

*Vide Chancery, (D. 12.)—Discent, (C. 9, 10.)—Execution, (A. 5.)—
Pleader, (C. 39.—3 M. 9, 17, 39.)—Prærogative, (D. 63.)—
Trespass, (B. 2, 3, 4.)*

P O S S I B I L I T Y.

Vide Assignment, (C. 3.)—Grant, (D.)

P O S T - D I S S E I S I N.

Vide Affise, (F. 1, &c.)

P O S T E A.

Vide Pleader, (T.)

P O U N D.

Vide Distress.

Pound-Breach.

Vide Distress, (D. 2.)

POUNDAGE.

P O U N D A G E.

Vide Parliament, (H. 12.)—Trade, (C. 1, &c.)

P O W E R.

Vide Poier.

P R A Y E R.

*Aide Priet.**Vide Abatement, (I. 29.)—Aide, (B. 1, &c.)*

Common Prayer.

Vide Parson, (C.)—Sacraments.

Prece Partium.

Vide Abatement, (I. 21.)

PRÆCIPE IN CAPITE.

Vide Droit, (C. 1.)

PRÆCIPE QUOD REDDAT.

Vide Recovery, (B. 3, 4.)

PRÆMIUM PUDORIS.

Vide Chancery, (4 D. 21.)

P R Æ M U N I R E.

(A) The Penalty of Præmunire.

A *Præmunire* (so called from the Words of the Writ *Quod Præmunire facias A, &c.*) imports an Offence, by which a Man incurs the Penalty of the *St. 16 R. 2. 5. viz. To be out of the King's Protection, to be attached in his Body, to lose his Lands and Tenements, Goods and Chattles. Co. L. 129. b.*

And therefore, by a Judgment in *Præmunire*, the Defendant shall be out of the King's Protection, and imprisoned during the King's Pleasure. *Co. L. 130. a.*

So he shall lose all his Goods and Chattles, and his Lands and Tenements in Fee. *Ibid.*

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So,

So, his Lands in Tail, &c. for his Life. *Co. L. 130. a.*

And being out of the King's Protection, in an Action by him, the Tenant or Defendant may shew the whole Record, and demand Judgment, whether he shall be answered. *Lit. S. 199.*

So, by the Common Law, being as an Enemy to the King, it was not Murder, or any Offence, if a Man killed him. *Co. Lit. 130. a.*—But now by the *St. 5 El. 1.* It is unlawful to kill him.

(B) What Offences are within the Penalty.

BY the *St. 35 Ed. 1. De Asport. Relig. 2, 3.* No Abbot, &c. shall cause to be carried out of the King's Dominion any Tax imposed on Religious Houses, under the Name of Rent, &c. or any Goods of their Houses, &c. nor shall any Abbot, &c. being an Alien, assess any Tallage, Payment, or other Burden on Houses in Subjection to them, on Pain of all that they have, or may forfeit.—And this is confirmed by the *St. 3 R. 2. 3.* and contains in Effect the Penalty of a *Præmunire. 2 Inst. 587.*

And it seems, that an Offender against the *St. 25 Ed. 3. 22.* against Provisors, is subject to the same Penalty.

So, by the *St. 27 Ed. 3. 1.* All who draw any out of the Realm in a Plea, which pertains to the King's Courts, or wherein Judgment hath been there given; or sue in any other Court to impeach a Judgment in the King's Court, &c. shall be out of the King's Protection, forfeit their Lands, Goods, and Chattels, and their Bodies shall be imprisoned and ransomed at the King's Will.

So, if he sues in another Court after Judgment, whereby the Cause is drawn *ad aliud Examen*, tho' it be within the Realm; as, if he sues in *Chancery*, to defeat a Judgment at Common Law. *3 Inst. 120, 123.*

Or, before the President and Council of *Wales*, Commissioners of Sewers, &c. *3 Inst. 124, 125.*

So, if he sues in the Ecclesiastical Court, Admiralty, &c. for a Cause out of their Jurisdiction. *Per Fineux, 15 H. 7. 9. R. 12 Co. 39, 40. 3 Inst. 121, 122.*

So, by the *St. 16 R. 2. 5.* If any purchase from *Rome*, &c. a Translation to a Benefice, Process to stay Execution of a Judgment in the King's Court, Sentence of Excommunication, Bulls, &c. *Dav. 84, &c.*

By the *St. 2 H. 4. 4.* If any purchase a Bull to be discharged of Tithes.

By the *St. 1 & 2 Ph. & M. 8.* If any molest any Abbey-Lands, &c.

By the *St. 1 El. 1.* The second Offence, and by *St. 5 El. 1.* the first Offence, if any by Writing, Teaching, &c. advisedly maintain the Authority of the Bishop of *Rome* within this Realm.

Or refuse the Oath of Supremacy prescribed by the *St. 1 El. 1.*

So, by the *St. 13 El. 2.* If any abet, &c. a Publisher or Receiver of Bulls, &c. or bring in, or receive to wear, &c. an *Agnus Dei*, &c. or if a Justice of Peace, on Discovery to him, reveals it not to the Privy Council in fourteen Days.

So, by the *St. 27 El. 2.* If any send Relief to a Jesuit, &c. beyond Sea.

By the *St. 3 Jac. 4.* If any, being not Noble, and above Eighteen, refuse the Oath of Allegiance, when tendred by the Bishop, or the Justices of the Peace at Quarter-Sessions. *1 Bul. 197.*

[By *Stat. 6 G. c. 18.* called the *Bubble Act*, Projectors of unlawful Undertakings: But the Court has a Power to moderate. *Rex v. Caywood, M. 8 G. Str. 472. 2 Ld. Raym. 1361.*]

(C) What Process against the Offender.

BY the *St. 16 R. 2. 5.* Process shall be made against the Offender by *Præmunire facias*, in Manner as is ordained in other Statutes of Provisors.

And

And by the *St. 27 Ed. 3. 1.* It was enacted, that there shall be a Writ to take the Body and seise the Lands and Goods into the King's Hands; and if returned *Non est invent'*, he shall be put in *Exigend'* and outlawed; but before Outlawry, he shall be received to answer, if he yield himself to Prison.

But an Indictment for a *Præmunire*, upon the *St. 1 El. & 13 El.* ought to say, *That the Defendant on Purpose, and set Intent to extol the Authority of the See of Rome, &c.* *R. Dy. 363. a.*

P R Æ R O G A T I V E.

(A) The King's Prerogative.

THE King's Prerogative comprehends all the Liberties, Privileges, Powers *Vide Roy, (A. and Royalties allowed by the Law to the Crown of England. Co. L. 1, 2.)*

90. *b. St. Prær. 5.*

For the King has not any Prerogative, but such as the Law allows. *12 Co.*

76. *2 Inst. 496, 63.*

And by the *St. of Marl. 52 H. 3. 5.* and other Confirmations of *Magna Charta*, it was enacted, *Quod Magna Charta teneatur tam in his, quæ ad Regem pertinent, quam ad alios.*

And therefore, no Prerogative of the King can be claimed, contrary to *Magna Charta. 2 Inst. 36.*

[The Care and Approbation of Marriages in the Royal Family do belong of Right to his Majesty, as King of this Realm. *By all the Judges of England, on a Question proposed by the King. H. 4 G.*]

[The Education and Care of the Persons of the Royal Family, the ordering the Place of their Abode, and appointing their Governors and Governesses, and other Instructors, Attendants and Servants, do belong of Right to his Majesty, as King of this Realm. *By ten Judges; against Price Baron, and Eyre Justice. Fort.*]

N. B. The Question here was as to the King's Grand-children, but the Arguments of the Judges went to all Persons of the Royal Family.]

[By *Stat. 12 G. 3. c. 11.* Marriages of Descendants of *George 2d.* (except Issue of Princesses married into foreign Families) without the King's Consent, are void; unless on twelve Calendar Months Notice to Privy Council, both Houses of Parliament do not declare their Disapprobation. *Vide Baron and Feme, B. 1.*]

(B) Prerogative as to Foreign Nations.

(B. 1.) Sovereignty of the Sea.

ALL the King's Prerogatives relate to Foreign States, or to his own Subjects. The King and his Progenitors have at all Times been Lords of the Sea.

2 Rol. 168. l. 45. Vide Navigation.

And therefore, the Dominion of the whole Sea which surrounds *England* belongs to the King. *1 Rol. 528. l. 15.*

And this Dominion extends to both Shores of the Sea. *2 Rol. 168. l. 45.*

And the Ligeance or Dominion of the Sea belongs to the King, as to his Crown of *England. 2 Rol. 170. l. 42.*

And therefore, the King gives Licence to the Men of *Zealand, &c.* to fish in his Sea. *2 Rol. 170. l. 30.*

To whom the Property and Soil of the Sea belongs, *Vide Navigation, (A.—B.)—To whom, the Fishery, Vide Post, (D. 50.)*

(B. 2.)

PRÆROGATIVE.

(B. 2.) Treaties.

The King has Authority to send Ambassadors, Envoys, &c. to Foreign States.
Vide Ambassador, (A.)

(B. 3.) Alliances.

To make Leagues and Alliances belongs to the King only. 7 Co. 25. b.

So, by Articles of Alliance, the private Property or Right of a Subject may be bound: As, if *A.* bound to *B.* a Subject of *England*, during a War between this Kingdom and *Denmark*, pays the Debt to the King of *Denmark*, by Order of the State there, and by the Articles of Peace, all Monies paid by the Subject of the one Prince, shall be quit by Monies paid by the Subjects of the other, and the Parties that paid to either of the King's Orders, shall be discharged against the Creditor; if *B.* sues for such Debt, *A.* shall have Relief in Equity. *R. 1 Ca. Ch. 123, 173.*

All Leagues ought to be upon Record inrolled in *Chancery*, whereby every one may know who are in Amity or Enmity with the King, and who not. 4 Inst. 152. 9 Co. 31. a.

By the *St. 2 H. 5. 6.* Killing or Robbing any, comprized in a Truce or Safe Conduct, was made High Treason. But this was repealed by the *St. 20 H. 6. 11.* and afterwards all Treasons, not within the *St. 25 Ed. 3.* were ousted by the *St. 1 Ed. 6. 12 & 1 Mar.* and all Offences against a Truce, and the King's safe Conduct, are now punishable by the *St. 2 H. 5. 6.* or by the Admiral. *Vide Post, (B. 5.)—Admiralty, (E. 8.)*

All Offences, contrary to Amity or League, are to the great Slander of the King, and Damage of the whole Kingdom. 2 Rol. 174. l. 45.

A League may be broken by levying War, or by Ambassador or Herald. 4 Inst. 152.

So, by a Prohibition of all the Commodities of the Kingdom in Amity. 2 Rol. 174. l. 5.

(B. 4.) Reprisals; When granted.

So, if a Foreign Prince, or State, seizes, or spoils the Goods of Subjects of *England*, the King may make Reprisal upon the Goods of the other's Subjects in this Realm. 2 Rol. 114.

So, if a Subject of a Foreign Prince, or State, takes, or spoils the Goods of a Subject of *England*, and his Sovereign, upon a Letter of Request to him by the King, refuses to do Right, the King may, by his Writ, arrest the Body or Goods of him who did Wrong. 2 Rol. 175. l. 5. 4 Inst. 137. Reg. 129.

And, if he, who did the Wrong, is not found, or has no Goods, &c. he may arrest the Goods of other Subjects of the same Prince within this Realm. 2 Rol. 175. l. 10.

Or, the King may enable him, to whom the Wrong was done, by Letters of *Marque*, the Goods of other Subjects of the same State, *mercere, retinere & appropriare, quousque Restitutio facta sit.* 2 Rol. 175. l. 20. *Per Coke, 1 Rol. 175.*

But a Subject of the King cannot take the Goods of the Subjects of a Prince in Amity with the King, by force of Letters of *Marque* of another Sovereign, or State. *R. 2 Ver. 592.*

So, by the *St. 4 H. 5. 7.* If any Attempt be made by the King's Enemies on the liege People against the Tenor of a Truce, wherein is not express Mention, that Letters of *Marque* and Reprisal shall cease, the King shall grant Letters of *Marque* to the Parties grieved, who may complain to the Keeper of the Privy Seal, and he, on the Complaint, shall make him Letters of Request, if desired, under the Privy Seal; and if, after Request, Satisfaction is not made, the Chancellor, on Demand, shall make him Letters of *Marque* under the Great Seal.

So the King may repeal such Letters of Reprisal after Peace established.

1 Ver. 54.

So, after a Truce, or Safe-conduct. 1 Ver. 54. 5.

Tho' there be a Clause inserted, that they shall not be void upon a Peace.

1 Ver. 54.

[By 13 G. 2. c. 4. The Officers, Seamen, and Soldiers in a Man of War, have the Property of all Prizes, in such Proportion as the King shall direct by Proclamation; and Privateers, according to their Agreement, without any Deduction to the King, Admiral, or others.]

[And by ff. 15. Five Pounds shall be paid by the Treasurer of the Navy for every Man on board an Enemy's Ship of War or Privateer, taken or destroyed, at the Beginning of the Engagement. And by Stat. 17 G. 2. c. 34. ff. 19.]

[By ff. 18. If *British* Ship is retaken, it shall be restored on paying for Salvage one eighth of the Value to a Man of War; and to a Privateer, if retaken in twenty-four Hours, an eighth, in forty-eight Hours a fifth, in ninety-six a third, and above ninety-six Hours an Half.]

[By Stat. 17 G. 2. c. 34. Ships of War have the sole Property of Prizes.]

[By ff. 2. & seq. Commissioners of Admiralty to give Commissions to Privateers; and the Method of Proceeding on Prizes are regulated.]

[By ff. 16. The King may grant Charters of Goods and Lands to be taken from an Enemy by private Adventurers.]

[By ff. 20. *English* Ships retaken from the Enemy shall be restored to the Owners, paying one eighth of the Value for Salvage to a Man of War; but to a Privateer, if retaken in twenty-four Hours, one eighth, if in forty-eight Hours one fifth, if in ninety-six Hours one third, if above one half, and if converted into Ship of War by the Enemy one Half.]

[Stat. 29 G. 2. c. 34. regulates the Distribution of Prizes, and 32 G. 2. c. 25. explains and amends it.

[Stat. 18 G. 3. c. 15. contains Regulations concerning Prize Goods not the Produce of *North America*.]

(B. 5) Safe-conduct.

The King only can make Letters of Safe-conduct. 7 Co. 25. b.

By which he takes the Party into his Keeping and Protection. *Vide Reg. Or. 25. b.*

And these Letters of Safe-conduct ought to be inrolled upon Record in Chancery. 4 Inst. 152.—By the St. 20 H. 6. 1. They are otherwise void.

And by the St. 15 H. 6. 3. They shall express the Name of the Ship, Master, Number of Mariners, with the Portage of the Ship.

And by the St. 18 H. 6. 8. Merchants may take Ships of Enemies, not having the Letters Patent of Safe-conduct on Board, or inrolled in Chancery. Conf. by the St. 20 H. 6. 1. S. 3, 4. and 14 Ed. 4. 4.

No Subject of a King, in Enmity with the King of *England*, can come into the Kingdom, without the King's Licence and Safe-conduct.

So a Sovereign of another Kingdom cannot come hither without the King's Licence, tho' he be in Amity: As, the King of the *Isle of Man* before its Subjection to the Kingdom of *England*. 7 Co. 21. b, Calvin.

So, of antient Time, an Ambassador, who was *Prorex*, could not come without a Safe-conduct. 4 Inst. 155.

But a Subject of a King in Amity may come without Licence, or Safe-conduct. 7 Co. 21. b. Calvin.

By the St. 31 H. 6. 4. If a Subject attaches the Person or Goods of any one, who comes by Way of Amity, Truce, or Safe-conduct, the Chancellor, calling to him any Justice of the one Bench or the other, on a Bill of Complaint, may make Process against the Offender; and may award Delivery and Restitution of the Person, Ship, or Goods. Conf. by 14 Ed. 4. 4.

How Breach of Safe-conduct shall be punished, *Vide Ante*, (B. 3.)—*Admiralty*, (E. 8.)

PRÆROGATIVE.

(C) Prerogatives in respect of the King's own Subjects; In Time of War.

(C. 1.) To declare War.

THE King's Prerogative in respect of his Subjects relates to War, or the Time of Peace: For the King has the sole Authority to declare War, or Peace. 7 Co. 25. b. *Vide Ante*, (B. 3.)—*Parliament*, (H. 24.)

(C. 2.) To levy Soldiers.

Antiently, every one, bound by Tenure to do any Service to the King in his Wars, ought to serve according to his Tenure.

And in the Time of H. 6. and since, it was usual for any Knight, or other, to make a Covenant with the King by Indenture, inrolled in the *Exchequer*, to serve him with so many Men named in a List, for so long a Time in his War. Co. L. 71. a.

By the St. 11 H. 7. 1. & 18. it is said, That every Subject, by the Duty of his Allegiance, is bound to serve and assist his Prince in his Wars, &c.

But a Man is not bound to serve the King out of the Realm, except for Wages. 1 Rol. 166. 1. 10. ad 30.

Nor can he be sent by the King out of the Realm to serve there. 2 Inst. 47. Tho' he be sent only to Ireland. *Ibid.*

Or, he sent to be in an Office, as Deputy, Captain, Ambassador, &c. *Ibid.*
[By 13 G. 2. c. 17. Every Person of fifty-five or under eighteen Years, and every Foreigner serving in a Trading Vessel or Privateer, is exempted from being pressed.]

[And all Persons for the first two Years of their going to Sea, and Apprentices for the first three Years.]

[And the Admiralty to grant Protections accordingly, without Fee.]
[By 13 G. 2. c. 28. §. 5. Persons employed in the Greenland Fishery exempt from being pressed.]

[The Right of impressing *Mariners* for the Sea-service, whenever the publick Safety requires it, is a Prerogative inherent in the Crown, grounded on the Common Law, and recognized by many Acts of Parliament. *Foster* 154.]

(C. 3.) Command of the Forces.

The Government and Command of the *Militia*, and all the Forces by Sea or by Land, and of all Forts, belong only to the King.

And by the St. 13 Car. 2. 6. It was declared, That the sole supreme Government, Command and Disposition of them, by the Laws of *England*, ever was the undoubted Right of the Kings and Queens of *England*; and that both or either of the Houses of Parliament ought not to pretend to the same.

[By the Acts of Mutiny and Desertion, the King's Power to make Articles of War is confined to his own Dominions; when his Army is out of his Dominions, he acts by Virtue of his Prerogative, and without the Statute or Articles; therefore the Courts here have no Jurisdiction for a Wrong done by an Officer to a Soldier there; (as for degrading him from being Serjeant to a common Soldier.) *Barwis v. Keppel*, T. 6 G. 3. 2 *Wils.* 314.]

[By the Stat. 30 G. 2. c. 25. 31 G. 2. c. 26. 32 G. 2. c. 20. 33 G. 2. c. 2. c. 22. c. 24. 2 G. 3. c. 20. c. 35. 3 G. 3. c. 10. 4 G. 3. c. 17. 4 G. c. 30. 5 G. 3. c. 34. c. 36. 6 G. 3. c. 30. 7 G. 3. c. 17. 8 G. 3. c. 20. 9 G. 3. c. 40. c. 42. 10 G. 3. c. 9. the new Militia is regulated, especially 2 G. 3. c. 20. reduces all the former Acts into one.]

[Substitutes are Militia-men, within 31 G. 2. c. 26. and as such their Families intitled to Relief out of the County Stock. *Rex v. Aston*, P. 1 G. 3. 2 B. M. 1149.]

[Inha-

[Inhabitant of a Town which does not contribute to County Stock, serving as Substitute for an Inhabitant of another Part of the County, his Family shall be relieved out of the County Stock. *Ibid.*]

[By Stat. 8 G. 3. c. 13. The King is authorized to keep up 15,235 Men in Ireland in Time of Peace.]

[By Stat. 18 G. 3. c. 53. Bounty of 3*l.* is given to Volunteers and Commissioners of Land-Tax, and Justices are impowered to impress all able bodied, idle and disorderly Persons, who cannot prove themselves to exercise and industriously follow some lawful Employment, or to have some Substance sufficient for their Support: But none under seventeen or above forty-five, or under five Feet four Inches without Shoes, nor Voters for Members of Parliament: To be discharged after five Years if no War.]

[Stat. 18 G. 3. c. 59. contains further Regulations concerning the Militia, and directs that one Half of the Allowance made to the Families of Substitutes, shall be reimbursed to the Parish by the Treasurer of the County.]

[*Ideo Semb.* that either the Decision: *Rex v. Aston*, 2 B. M. 1149 *supra* was not warranted by Law, or this Clause is nugatory.]

(C. 4.) Building of Forts, &c.

So the King, by his Prerogative, has the sole Power of building Castles, Forts, &c.

And a Subject cannot build a Castle, an House with Battlements, or any Fortress, without the King's Licence. *Co. L. 5. a.*

Vide War.

(D) Prerogatives, which regard Time of Peace.

(D. 1.) Enacting of Laws.

THE King's Prerogatives, which concern Times of Peace, relate 1. To the Enacting of Laws. 2. Jurisdiction. 3. The Nomination of Officers. 4. Trade. 5. The Revenue.

And therefore, no Statute can be enacted without the Royal Assent. *Vide Parliament*, (G. 10, 21.—R. 3, &c.)

But the King cannot alter the Course of Descent by his Grant: As, he cannot, by his Charter, make Land to be partible among all the Children, which before descended to one. 2 *Rol.* 164. l. 5.

Nor grant, that Land shall be deviseable. 2 *Rol.* 164. l. 7.

That a Man shall hold his Land, after his Profession in Religion, 2 *Rol.* 164. l. 10.

So the King cannot by his Grant alter the Law in any Respect: As, he cannot give Power to any to oust another of his Land. 2 *Rol.* 164. l. ult.

So the King, by his Proclamation, may inforce the Execution of Laws.

And therefore, if the King by Proclamation prohibits that, which was before unlawful, the Offence afterwards will be thereby aggravated. 12 *Co.* 75.

So the King, by his Proclamation, may admonish his Subjects, that they do not offend, under the Penalty of the Law. 12 *Co.* 76.

So, by the *St.* 1 *Jac.* 25. The King may, by Proclamation, restrain the Transportation of any Grain, generally, or from any particular Ports.

And by the *St.* 12 *Car.* 2. 4. S. 12. The Transportation of Gunpowder, Arms, or Ammunition.

By the *St.* 31 *H.* 8. 8. The King, with the Assent of the greater Part of the Privy Council, might issue a Proclamation, which should be obeyed as an Act of Parliament, and the Offender to pay such Forfeitures, and suffer such Imprisonment as mentioned in the Proclamation. But this is now repealed by the *St.* 1 *Ed.* 6. 12.

(D. 2.)
Proclama-
tions
When he may
issue them.

But

(D. 3.)
When not.

But the King cannot, by his Proclamation, make a Thing unlawful, which was before lawful; for the King cannot create an Offence by Proclamation. 12 Co. 75.

And therefore, nothing will be punishable after a Proclamation, which was not so before. *Ibid.*

So he cannot by Proclamation alter any Part of the Common Law, Statutes, or Customs of the Realm. *Ibid.*

And therefore, a Proclamation, for the Suspension of the Execution of a Statute, till the next Parliament, is illegal and void. *Ibid.*

A Proclamation, that none import Wines of such a Country, which is in Amity, under the Pain of Forfeiture, will be void. 2 Inst. 63.

A Proclamation, that if the Buyer of an Horse in a Fair or Market, or out of a Fair or Market, in the County of N. do not pay Toll, his Horse shall be forfeited, is void. *Semb. but not determined*, 2 Rol. 172.

So none can make Proclamation, but by the Authority of the King, or lawful Custom; for it is the Prerogative of the King to issue Proclamations. 12 Co. 75.

So every Proclamation ought to be *sub magno Sigillo Anglia*. Cro. Car. 180.

And it is most proper and safe to be so pleaded. R. Cro. Car. 180.

(D. 4.)
Dispensation.
The Nature
and Effect of
it.

A Dispensation makes an Act, otherwise prohibited, lawful to him, to whom the Dispensation is granted; for *dat Jus*. Vau. 333.

And this Prerogative belongs to the King by the Common Law, in a Case of Necessity. Hard. 446, 448.

But Dispensations are odious in Law. 2 Rol. (179.) l. 25.

(D. 5.)
How it shall
be made.

In a Dispensation, the Word *dispense* is not necessary: And therefore, a Dispensation to hold a Plurality by the Words, *unimus, incorporamus, &c.* is sufficient. R. Cro. El. 720.

(D. 6.)
In what Cases
the King may
make a Dis-
pensation.

If an Act of Parliament regards only the King's Benefit, he, by his Prerogative, may grant a Dispensation of the Statute. 2 Rol. 179. l. 47.

In which Case the King, in respect of Place, Time, or Person, dispenses with a particular Person, that he shall not incur the Penalty of the Statute. 7 Co. 36. b.

As, if a Statute prohibits a Thing only *sub Modo*, or under a Penalty. *Semb.* Hard. 110.

So, where a Statute limits a Time for Advancement of Justice, the King may enlarge it: As, where the St. W. 2. 10. provides, That in the Eyre, Proclamation be made for Delivery of Writs within fifteen Days, or a Month, the King may enlarge the Time by his Dispensation. 2 Inst. 377.

So, if a Prohibition by a Statute be general, yet, in respect of the Inconvenience to particular Persons, tho' a Remedy be given for the Penalty to the King alone, or by Action popular, the King may dispense with the particular Persons. 2 Rol. 179. l. 35.

As, if the King lets Lands to the Vicar of W. in Farm, to the Intent that he maintain Hospitality, *non obstante*, any Statute. *Semb. Sav.* 22.

(D. 7.)
In what not.

But the King cannot dispense with a Thing, being *Malum in se*. Hard. 448.

As, that a Simoniack may take a Benefice. Hard. 445. 3 Inst. 154.

Nor with a Thing, which would be a Nuisance. Hard. 444, 5.

So the King cannot dispense with a Thing, against which the Subject may defend himself by Law.

So the King cannot dispense with any Thing, in which the Subject has an Interest. Hard. 449.

And therefore, he cannot change or dispense with the Common Law, by his Charter: As, if he grants that an Alien shall inherit, it will be void. 2 Rol. 115.

That

That Land, of the Nature of *Gavelkind*, shall descend to the eldest Son. 2 *Rol.* 115.

So the King cannot dispense with *Magna Charta*, which is incorporated into the Common Law. *Ibid.*

Nor, with the *St.* 13 & 15 *R.* 2. 3 & 5. or 2 *H.* 4. 11. which restrain the Incroachments of the Admiralty. 4 *Inst.* 135, 137. *Vide infra.*

Nor, with a Statute for the Benefit of the Church, or the Publick Good; for every Subject has an Interest in it. As, the *St.* 5 & 6 *Ed.* 6. against the Sale of Offices. 3 *Inst.* 154.

Or, the Statute, which requires the Oaths of Allegiance and Supremacy. *Ibid.*

So the King cannot dispense with an Act of Parliament, by which the Subject has Benefit. 2 *Rol.* (179.) l. 50.

As, if a Statute prohibits a foreign Manufacture *pro Bono Publico*, to the Intent that the People here may make the Manufacture, the King cannot dispense with it. 2 *Rol.* (179.) l. 40. *R.* 11 *Co.* 88.

The *St.* 15 *R.* 2. provides that the Admiral shall not hold Plea except of a Thing done *super altum Mare*; the King cannot dispense, that he shall hold Plea *a primis Pontibus usque ad Mare*: For the Statute was made for the publick Good. 2 *Rol.* 179.) l. ult.

So the King cannot dispense with the *St.* 27 *Ed.* 3. That Merchants Aliens, but not Denizens, might export Merchandize of the *Staple*. 2 *Rol.* (180) l. 5.

Nor, with the *Stat.* 5 *El.* 4. That the Indenture of Apprenticeship of a Mariner shall be inrolled in the next Town Corporate, to make it to be inrolled in the Corporation of *Trinity-House*. *R.* 3 *Lev.* 389.

Nor, with the Statute against Recusants. *R.* *Hard.* 110.

Tho' the Remedy be given to the King for the Benefit of the Subject.

So the King may pardon all Offences, of which a Man is attainted, or convicted. *Vide Pardon*, (A.) (D. 8.) Pardon.

So, all Offences within the Jurisdiction of the Spiritual Court.

So, if a Man be excommunicated for a Contempt, and the King grants a general Pardon, whereby the Contempt will be pardoned, the Excommunication is avoided: And, if he be taken upon an *Excommunicato capiendo*, he shall be discharged. *R.* 2 *Rol.* (178.) l. 45. *Adm.* 2 *Lev.* 36.

But the King cannot reverse a Judgment against a Criminal, without legal Process. 2 *Rol.* 164. l. 50.

(D. 9.) Prerogative as to Jurisdiction Ecclesiastical.

The King has full Prerogative and Jurisdiction to do Justice and Right to All within his Kingdom, in all Causes Ecclesiastical, or Civil. 5 *Co.* 8. b. *De Jur. Eccl.*

And may correct and reform all Crimes, Abuses, and Enormities within his Kingdom. 5 *Co.* 9. b. *De Jur. Eccl.* 2 *Rol.* 230. l. 5. *Vide Visitor*, (A. 1.)

By the *St.* 37 *H.* 8. 17. The Parliament recognizes, that the King is Supreme Head in Earth of the Church of *England*, and hath full Power and Authority to punish and repress all Manner of Heresies, Errors, Vices, Sins, Abuses, Idolatries, Hypocrisies, and Superstitions within the same, and to exercise all Manner of Ecclesiastical Jurisdiction. And This was before enacted by the *St.* 26 *H.* 8. 1. *Vide Post*, (D. 17.)

But the *St.* 26 *H.* 8. 1. and 37 *H.* 8. 17. were repealed by the *St.* 1 & 2 *Ph.* & *M.* 8. and afterwards by the *St.* 1 *El.* 1. all Statutes there mentioned are revived; among which was the said *St.* 37 *H.* 8. 17.

And by the *St.* 8 *El.* 1. it is allowed, that K. *Henry* 8th by the Clergy in Convocation, and by the Lords Spiritual and Temporal and Commons in Parliament, was rightfully acknowledged to have the Supreme Power, Jurisdiction, &c. over all the Estate Ecclesiastical, and the same did use accordingly.

And all Ecclesiastical Jurisdiction began originally by the Grant of *W. 1.* or rather by Parliament: For before, Ecclesiastical Causes were determined in the Hundred. *2 Rol. 216. l. 20.*

The Jurisdiction of the Bishops, &c. began by the King's Grant. *2 Ruff. 1343.*

This supreme Ecclesiastical Authority is inherent in the King, and a Flower of his Crown. *Hob. 143. Vide Post, (D. 17.)*

Wherefore he may by *Mandamus* command the Ecclesiastical Judge to do Right: As, to swear a Churchwarden, Sexton, &c. chosen according to Custom. *R. 2 Rol. 234. l. 15, 35. Vide Mandamus, (A.)*

To grant Administration, Probate of a Will. *2 Rol. 234. l. 30.*

So, before the *St. 16 Car. 11.* he could grant an High Commission for the Correction of Abuses, &c. which was not founded upon the *St. 1 El. 1.* but by the Antient Power of the Crown explained and declared by that same Statute. *R. 2 Cro. 37. 2 Rol. 219. l. 30. Vide Courts, (N. 1.)*

So the King, as Sovereign of the Realm, ought to endeavour that Nothing be done to the Disherison of the Crown, or Propagation of a false Religion: And therefore, he may exhibit an Information for the Discovery of a Superstitious Use. *R. 1 Sdl. 163. Vide Uses, (M.)*

As to the Usurpation of Ecclesiastical Jurisdiction by the Pope, and how restrained, *Vide Ecclesiastical Persons, (B. 1.)—Popery.*

(D. 10.)
Ecclesiastical
Laws.
What are.
Vide Canons.
(C.)—Con-
vocation, (E.)

The Ecclesiastical Laws, tho' derived from Others, yet being approved and allowed here by general Consent, are the King's Ecclesiastical Laws. *5 Co. 9. a. De Jur. Eccl. Dav. 70. b.*

And by the *St. 25 H. 8. 21.* England is subject to no Laws, but such as are made within the Realm, or by long Use, and free Consent the People have bound themselves to the Observance of. *Vide Canons, (C.)*

And therefore, the Ecclesiastical Laws are made within the Realm, or adopted by Usage, and Custom.

Before the Conquest, the King, with the Assent of the Clergy, and since the Conquest, in Convocation and Provincial Synods, have made Constitutions, All which are Part of the Ecclesiastical Laws at this Day. *Dav. 72. b.*

And such Constitutions, with the King's Assent, are good Laws for the Government of the Clergy, without the Parliament. *R. 2 Cro. 37. R. Mo. 783.* in Ecclesiastical Matters.

But a Bishop, or other Ordinary, cannot, without a Canon or Custom, command a Lay-man to observe any new Rule, or Ceremony. *Per 2 J. Houghton cont. 2 Rol. 221. 2.*

(D. 11.)
Are within
the Power
of the King.

Forasmuch as the Ecclesiastical Laws are the King's Laws, the Interpretation and Execution of them belongs to the King, and his Ministers. *Dav. 70. b. Vide Canons, (C.)*

So the King has Power to dispense with the Ecclesiastical Law. *R. Dav. 73. a. 70. b.*

And therefore, may exempt from the Visitation and Jurisdiction of the Ordinary. *Dav. 73. a. Vide Visitor, (A. 7.)*

He might of Common Right, before the *St. 25 H. 8. 21.* grant a Dispensation in Commendam. *Dav. 73. Vide Post, (D. 18, &c.)*

He might dispense with a Bastard to be a Priest. *Hob. 147.*

So the King may pardon an Offence contrary to a Canon, or the Ecclesiastical Law. *Dav. 73. a.*

And such Pardon shall be a Bar in all Suits *pro Salute Animæ*, or *Reformatione Morum*, and all Suits *ex Officio* in the Ecclesiastical Court. *Dav. 73. a. Vide Pardon, (E. 1.)*

What Causes belong to Ecclesiastical Conusance, or not, *Vide Prohibition, (A. 2.—F. 1, &c.—G. 1, &c.)*

As to the Jurisdiction, and Proceedings in Ecclesiastical Courts, *Vide Courts, (N. 1, &c.)*

So the King, and Commissioners appointed by him, may pronounce Sentence of Deprivation, or other Ecclesiastical Censures, pursuant to the Common Law used in this Realm. *Semb. 2 Cro. 37. R. Mo. 755.* (D. 12.) Censures Ecclesiastical.

And where a Bishop takes Caution by Obligation, he ought to take it in the Name of the King. *Per Wild, 2 Lev. 36.*

So the King, and his Commissioners, may pass a Censure, pursuant to a Canon, tho' there be a High Commission for the same Offence. *Poph. 59.*

But an Ecclesiastical Judge cannot impose a pecuniary Mulct or Fine for an Offence. *2 Rol. 216. l. 35. Vide Poph. 60.*

By the St. 24 H. 8. 12. All Causes Testamentary, of Matrimony, Divorce, Tithes, &c. shall be finally determined within this Realm, without Appeal, &c. to the See of Rome, or other Foreign Court: And any who procures such Appeal, &c. shall incur a *Præmunire*. *Conf. by the St. 25 H. 8. 19.* (D. 13.) Appeals. In what Court an Appeal shall be.

And, by Common Law, Appeals were determined within the Realm, without Appeal to Rome. *2 Rol. 233. l. 25 ad 35.*

By the St. 24 H. 8. 12. If a Cause be begun, before an Archdeacon or his Official, the Appeal shall be to the Bishop of the Diocese. *Vide 4 Inst. 339.*

If commenced before the Bishop Diocesan, or his Commissary, to the Archbishop of the same Province. *4 Inst. 339.*

[An Appeal lies from the Ordinary about setting up Ornaments in a Church; and if the Ordinary, as Archdeacon, was also Commissary to the Bishop, the Appeal is to the Metropolitan. *Cart v. Marsh, M. 11 G. 2. Str. 1080.*]

If, before the Archdeacon of any Archbishop, or his Commissary, to the Court of the Arches, or Audience of the same Archbishop, and from that Court within fifteen Days after Sentence there, to the Archbishop of the same Province.

If the King be concerned, the Appeal shall be to the Upper House of Convocation. *4 Inst. 339, 340.*

And by the St. 25 H. 8. 19. Appeals shall be made in the same Manner in all Causes, of what Nature soever.

An Appeal from the Bishop, or his Commissary, to the Archbishop in his Court of Arches, is good; tho' this is not the proper Court: For these Words, *in his Court of Arches*, shall be rejected as superfluous. *R. Dy. 240. b.*

So an Appeal lies from the Dean, or Commissary of the Archbishop, in his exempt Jurisdiction, to the Court of Arches or Audience by the Common Law; for it is not within the St. 24 H. 8. 12. *Ought. Tit. 275.*

So it lies a *Delegata ad Delegantem*, viz. from the Commissary or Official of a Bishop, to the Bishop himself. *Ought. Tit. 274.*

By the St. 24 H. 8. 12. Causes commenced before any of the Archbishops of Canterbury or York, or brought before them by Way of Appeal, shall be finally determined by them, without other or further Appeal. (D. 14.) To the Delegates.

But by the St. 25 H. 8. 19. For Lack of Justice in any the Courts of the Archbishops, it shall be lawful for the Parties grieved to appeal to the King in Chancery, and on such Appeal, a Commission under the Great Seal shall be directed to such as shall be named by the King (as in Case of Appeal from the Admiral's Court) to hear and definitively determine such Appeal, with all Circumstances concerning the same, whose Sentence shall be definitive.

And by the same Statute, Appeals from the Governors of Abbies, or other Places exempt, shall be made to the King in Chancery (as before to the Pope) immediately, and be by such Commissioners definitively determined.

And therefore, in all Ecclesiastical Causes, an Appeal lies to the Delegates. *4 Inst. 339.*

[It is discretionary in the Court of Chancery, whether they will grant a full Commission of Delegates, (i. e.) to Lords Spiritual and Temporal, Judges at Common Law, and Civilians) or to Judges and Civilians only. *Ex parte Hellier, P. 1754. 3 Atkyns 798.*]

[Where

[Where the Jurisdiction of Bishops is in Controversy, or a Question depending which concerns the Canon or Ecclesiastical Law, a full Commission is granted; where it is a mere Matter of Law, as a Question on a Will, it issues to Judges and Civilians only. *Ibid.*]

[One interested in a Sentence may have a Commission of Delegates to review, tho' no Party to the original Suit. *Jones v. Bougett, H. 1739. 1 Atkyns 298.*]

The King may appoint whom he pleases to be the Delegates.

And afterwards may add Others by a Commission of Adjuncts. *Ray. 475.*

If any of the Judges are in the Commission, the Place of Assembly is usually appointed by one of them at *Serjeant's-Inn. Ray. 476.*

[On an Appeal on a Collateral Point, the Court of Delegates may, instead of remitting the Cause to the Arches, retain it *ad instantiam partis*, and hear it on the Merits. *Williams v. Osborne, Delegates 1718. Str. 80.*]

The Delegates ought to proceed according to the Ecclesiastical Laws, and they cannot fine or imprison. *4 Inst. 334. Conf. by St. 13 Car. 2. 12.*

They may excommunicate. *R. 2 Rol. 233. l. 10. Cont. 2 Bul. 4.*

So, if they repeal an Administration granted by an Inferior Judge, they may grant Administration. *Semb. Lat. 85. 2 Rol. 233. l. 10. Vide Administrator, (B. 2.) R. cont. 2 Bul. 4.*

But an Appeal does not lie to the Delegates upon a Sentence of Deprivation by a Visitor of a College; for this is a Temporal Matter. *4 Inst. 340. Dy. 209. a.*

Or, by Visitors constituted by Special Commission. *4 Inst. 340. 2 Rol. 232. l. 50.*

As to an Appeal to the Delegates in Marine Causes, *Vide Admiralty, (G.)*

To Parliament, from Chancery, *Vide Parliament, (L. 7.)*

To a Visitor, *Vide Visitor.*

To the Pope, *Vide Popery, (A. 3.—B. 2.)*

(D. 15.)
To the Con-
vocation.

By the *St. 24 H. 8. 12.* In Causes Testamentary, or of Marriage Divorce, Tithes, &c. which may touch the King, the Appeal shall be to the Upper House of Convocation of the same Province. *Vide Convocation, (D.)*

(D. 16.)
Commission
for Review.

Tho' by the *St. 24 & 25 H. 8.* The Sentence of the Delegates is final, yet the King may grant a Commission of Review; for this is not restrained by the same Acts, and the Pope, as supreme Head (whose Authority is now annexed to the Crown by the *St. 26 H. 8. 1. and 1 El. 1.*) had Power to do it. *R. 4 Inst. 341. R. Mo. 462. Cro. El. 571.*

So, tho' a Decree by the High Commission had no Appeal, yet the King, by a Special Commission, might have examined it. *2 Rol. 233. l. 20. Adm. Mo. 782.*

But a Commission of Review is *ex Gratia*, and not of Right. *Mo. 782.*

If an Appeal be just, the Superior Judge ought to receive it. *4 Inst. 340.*

And the King cannot take away the Benefit of an Appeal. *Ibid.*

An Appeal lies *à Sententiâ definitiva, vel Decreto interlocutorio habente Vim Sententiæ definitivæ per Procuratorem Vivâ Voce* immediately upon Sentence given. *Ought. Tit. 289, 295.*

Or, within fifteen Days after Sentence, in Writing before a Notary Publick. *Ought. Tit. 295, 296.*

So an Appeal lies *a Gravamine* before Sentence; which ought to be in Writing, and specify the *Gravamen*. *Ought. Tit. 277, 285.*

If an Appeal be lawfully made, the Inferior Judge cannot proceed; for his Authority is suspended. *4 Inst. 340. 6 Co. 18. b.*

So, by an Appeal, the Sentence is suspended. *2 Rol. 233. l. 40.*

If an Appeal be from a Sentence of Excommunication, the Party might *celebrare Missam*, may sue Actions, &c. pending the Appeal. *2 Rol. 233. l. 42.*

And, where a Sentence is afterwards revoked and annulled upon a Citation, without Appeal, all *mesne* Acts are good. *R. 6 Co. 18. b.*

So,

So, if the Commission of an Inferior Judge has the Words, *Appellatione remota*, he may proceed to the Execution of his Sentence, till the Appeal received and an Inhibition sent to him. 4 *Inst.* 340.

So if, after Sentence, the Party be excommunicated for not performing it, and then he appeals; tho' the Sentence be thereby suspended, the Excommunication is not suspended. R. *Mo.* 850.

In an Appeal from a definitive Sentence (not upon a *Gravamen*) each Party may *non allegata allegare, et non probata probare*.

If there be an Appeal to a Superior Judge, he ought to give the same Sentence that the Inferior ought: As, if they repeal an Administration granted by an Inferior Judge, the Delegates may grant Administration. *Lat.* 85. *Vide Ante*, (D. 14.)—*Administrator*, (B. 2.)

So, if the Superior Judge revokes the former Sentence, he ought to reverse all the *mesne* Acts done after the Appeal to the Prejudice of the Appellant. 4 *Inst.* 340.

By the *St.* 16 R. 2. 5. of *Præmunire*, The Crown of England is subject to none, but immediately unto God. (D. 17.)

And by the *St.* 25 H. 8. 21. The Kingdom of England recognizes no Superior under God, but the King. *Vide Dav.* 61. Supremacy
in Ecclesiasti-
cal Affairs.

And this was only a Declaration of the Common Law. *Mo.* 782.

And therefore, the King of England is *Supremum Caput Ecclesiæ Anglicanæ*. *Vide Ecclesiastical Persons*, (A.)

This Title of *Supreme Head of the English Church*, was first attributed to the King by the Clergy in Convocation, 20 H. 8. *Co. L.* 7. a.

And was afterwards used by the King, 22 H. 8. *Ibid.*

By the *St.* 26 H. 8. 1. The King, his Heirs and Successors, shall be reputed the only Supreme Head in Earth of the Church of England, and shall have, united to the Imperial Crown of this Realm, as well the Title and Stile thereof, as all Honours, Dignities, Jurisdictions, &c. to the same belonging, &c.

By the *St.* 37 H. 8. 17. The same Title was recognized by Parliament. *Vide Ante*, (D. 9.)

But those Statutes were repealed by the *St.* 1 & 2 Ph. & M. 8. yet afterwards by the *St.* 1 El. 1. that Statute of Repeal was repealed, as to all Statutes by this revived, and the Statute 37 H. 8. 17. is thereby expressly revived.

And by the *St.* 1 El. 1. All Jurisdictions, Privileges, &c. Spiritual or Ecclesiastical, by any Spiritual or Ecclesiastical Power, or Authority lawfully used, for the Visitation of the Ecclesiastical State or Persons, Reformation, Order, or Correction of the same, and of all Errors, Heresies, Schisms, &c. shall be for ever annexed to the Imperial Crown of this Realm.

And therefore, all Ecclesiastical Jurisdiction, tho' usurped by the Pope, was now restored to the Crown. 4 *Inst.* 325. *Vide Ecclesiastical Persons*, (A.—B. 1.)

So, by the *St.* 1 El. 1. * The Queen, by Letters Patent under the Great Seal, may authorize such Persons, being natural born Subjects, whom, when, and as long as she pleases, to exercise all Spiritual and Ecclesiastical Jurisdiction within her Dominions: And to visit, reform, correct, &c. all Errors, Heresies, Schisms, Abuses, &c. which by any Spiritual or Ecclesiastical Power, &c. may be lawfully reformed, &c. * *Vide Courts*, (N. 1.)

So Ecclesiastical Courts may be held in the Name of the Ordinary, without the King's Patent. 2 *Rush.* 451. *Cont.* 2 *Rush.* 1344. *Acc.* 12 *Co.* 7. 2 *Rush.* [* Repealed
by 16 Car. 1.
11.]

App. 278. And all Process may issue under the Seal of the Ordinary, and needs not the Great Seal, or other Seal of the King. 2 *Rush.* 451.

Tho' by the *St.* 1 Ed. 6. 2. it was enacted, That all Process Ecclesiastical shall be made in the Name of the King, and have no other Seal than what hath the King's Arms, &c. for that Statute is now repealed. R. 12 *Co.* 7.

(D. 18.)
Dispensation
in Commenda-
dam.
When a Dis-
pensation is
necessary.

By the antient Ecclesiastical Law, a Bishop could not have or hold a Benefice with Cure within his Diocese; for, if he had such, it became void when he was created a Bishop. *Dav. 68. b. Vau. 19, 20.*

So, by Acceptance of a second Benefice with Cure, by the Common Law the first became void. *Vide Esglise, (N. 5.)*

And therefore, in these Cases, a Dispensation was necessary for retaining the first Benefice.

A Dispensation in *Commendam* is *Semestris, Temporaria, or Perpetua.* *Hob. 144.*

Semestris is for six Months after Avoidance, till Presentation; and therefore lawful. *Ibid.*

So a Perpetual *Commendam*, or for Life, to take, with the Consent of the Patron, may be allowed in some Cases; for it is in the Nature of a Provision. *Hob. 153.*

Otherwise, of a Temporary *Commendam.* *Hob. 153, 155.*

(D. 19.)
By whom it
may be
granted.
When by the
King.

But the King may grant a Dispensation to a Bishop elect, before Consecration, to retain his Benefice in *Commendam*, by the Common Law. *R. 2 Rol. 233. l. 50. Hob. 143. Dav. 73. Hob. 147.*

So the King may grant all Dispensations since the *St. 25 H. 8. (Vide Post, (D. 20.)* in the same Manner as before; for tho' the Statute says, *All Dispensations shall be granted in Manner following, and not otherwise*, the King is not thereby restrained. *Hob. 146.*

And therefore, the King now may grant a Dispensation *retinere in Commendam.*

And this may be for Years, or *quamdiu* he is a Bishop; for it continues the former Incumbent for a Time. *Hob. 156.*

So it may be *tenere* a Deanery, Prebend, or other Dignity in *Commendam.* *2 Rol. 451.*

(D. 20.)
When not.
And when a
Dispensation
may be grant-
ed by the
Archbishop,
or not.

Yet a Dispensation *capere* in *Commendam* a Church, then full of an Incumbent, cannot be granted. *Hob. 150.*

By the *St. 25 H. 8. 21.* Every Dispensation, Licence, &c. shall be granted in Manner following, and not otherwise, *viz.* The Archbishop of *Canterbury* shall have Authority by Instrument, under the Seal of the Archbishop, to grant all Dispensations, &c. necessary for the Profit of the King and his Realm, so as he grant none for any Cause repugnant to the Law of God.

But shall grant none but in Cases accustomed to have such by the Authority of the See of *Rome*, without Licence of the King, by Bill signed.

And all Dispensations of Importance which paid 4 *l.* for Expedition at *Rome* (and of the Tax of all Dispensations at *Rome* two Books shall be made, one to remain with the Register of the Faculties, the other with the Clerk in *Chancery*) shall be confirmed under the Great Seal.

And all other Prelates may dispense, &c. in the same Manner as they could by the Common Law, or the Custom of the Realm.

And therefore, in Cases, in which it was generally allowed the Pope might grant a Dispensation, the Archbishop now may grant a Dispensation by this Statute. *Hob. 146.*

And therefore, the Archbishop may grant a Dispensation to take a Plurality, within the *St. 21 H. 8. Vau. 20.*

But the Archbishop cannot grant a Dispensation by this Statute, except in *Spiritualibus*, in which the Pope was allowed to grant *quasi de Jure.* *Hob. 147, 148.*

So the Archbishop is restrained from granting Dispensations in four Cases, where the Pope granted them: As, by the Statute itself he is restrained in Cases repugnant to the Divine Law. *Hob. 147.*

And therefore, he cannot grant it for a prohibited Marriage. *Hob. 147, 148.*

Nor, for an Alien, who does not speak *English*, and reside, to be a Priest. *Hob. 148.*

Nor, for Benefice to be appropriated to a Nunnery. *Hob. 148.*

2. He cannot grant it, in any Case contrary to the *St. 21 H. 8.* against Pluralities. *Hob. 147. Vide Esglise, (N. 5, 8.)*

3. Nor in Cases contrary to the King's Prerogative, or the Laws and Statutes of the Realm. *Hob. 148.*

And therefore, a Dispensation *capere in Commendam* any Churches not above such a Value, without mentioning that they are void, tho' made by the Archbishop, and confirmed by the King, is not good. *R. Hob. 150.*

Or, *capere*, without expressing a Provision for the Consent of the Patron. *Hob. 152.*

So 4. The Archbishop by this Statute cannot grant a Dispensation, except in Cases convenient and necessary, upon Examination of the Cause, and Quality of the Person. *Hob. 148.*

And therefore, a Dispensation by the Archbishop, with the Confirmation of the King, *capere in Commendam* for Years, or *Quamdiu* he shall be Bishop of such a See, &c. will be void: for he is not a compleat Incumbent, and other Inconveniences ensue. *Hob. 153, 155.*

Every Offence by an Ecclesiastical Person contrary to the Duty of his Function, may be punished by the Spiritual Court. *1 Sal. 134.* (D. 21.) Deprivation.

So he may be deprived for a Crime. *1 Sal. 134, 135.* For what Causes it shall be.

A Bishop, by the Archbishop of his Province, as well as a Parson, Vicar, or other Ecclesiastical Person of an inferior Order, by his Ordinary. *1 Sal. 135.*

So a Deprivation may be by Ecclesiastical Commission, as well as by the Bishop, or other Ordinary. *R. Jon. 393.*

And therefore, a Parson, &c. may be deprived if he be an Heretick. *Dal. 51.*

If he depraves the Common Prayer. *R. Popb. 60.*

If he be an Infidel, or Miscreant, which signifies a Misbeliever.

So, by the *St. 13 El. 12.* If he advisedly and directly maintain Doctrine repugnant to the 39 Articles, and being convented before his Ordinary, &c. shall not revoke his Error; or, after Revocation, affirm such untrue Doctrine.

So, if he be a Schismatick.

So, by the *St. 1 El. 2.* If he refuse to use the Book of Common Prayer, or to administer the Sacraments according to it, or use other Form, or Prayers, &c. or speak or preach in Derogation thereof, having formerly been convict for the like Offence.

Or, by the *St. 14 Car. 2. 4.* if he read not Morning and Evening Prayers publickly on some Lord's Day within two Months after his Induction, and declare unfeigned Assent to the Use of all Things contained in the Book of Common Prayer: or, in Case of lawful Impediment, within a Month after the Impediment removed.

So, if he be convict for any Non-Conformity.

So, if he be obstinately disobedient to the lawful Canons of the Church.

As, if he takes an incompatible Benefice, without a Dispensation.

If he takes a Benefice by a simoniacal Contract. *1 Sal. 134.*

If he be a common Drunkard. *R. 1 Brownl. 70. 2 Brownl. 37. Win. Ent.*

219.

So he may be deprived for the first Offence in Depravation of the Common Prayer; for the Statute being in the Affirmative does not take away the Effect of the Canons. *R. 5 Co. De Ju. Eccl. 3, 5. 2 Rol. 222. l. 30.*

So, if he be incorrigibly disobedient to his Ordinary.

So, if he be guilty of Murder.

Or, before the *St. 18 El. 7.* if he was convict of any Homicide, and could not purge himself. *2 Rol. 222. l. 15.*

So, since the *St. 18 El. 7.* if he be convict of Manslaughter by Verdict; for tho' the Statute oults the Purgation, it does not take away the Offence. *2 Rol. 222. l. 20.*

So, if convict for Perjury in the Spiritual Court for a Spiritual Matter. *Per Holt, 1 Sal. 134.*

Or,

Or, Forgery of Orders. 1 *Sal.* 134.

So, if he be *merè Laicus*. R. Dy. 293. *Bend. pl.* 234.

So he may be deprived for Dilapidation of the Church. 1 *Sal.* 134, 5.

If an Abbot had aliened Lands, which he had in Right of his Abby. 2 *Rol.* 222. l. 10.

(D. 22.) A Sentence of Deprivation, tho' it be for Nullity of Institution and Induction, The Effect of as that the Presentee was *merè laicus*, does not relate to make an Avoidance ab a Deprivation. *Initio*, so as to give a Lapse to the Bishop. 2 *Rol.* 220. l. 20.

Or, to make the Institution and Induction of a Clerk by A. after the Institution of the Presentee deprived, but before his Deprivation, to be good. 2 *Rol.* 220. l. 10.

Or, to make a Marriage, Administration of the Sacraments, or other Spiritual Act by him, void. R. Cro. El. 775. Mo. 606.

Or, to make a Lease by him, confirmed by the Patron and Ordinary, to be void. R. Cro. El. 775.

But if, after Deprivation, the Party deprived be restored by lawful Commissioners, the Sentence of Deprivation is annulled, and the Incumbent continues, and a Presentation upon such Deprivation does not supply it's Turn. R. Mo. 558.

If a Deprivation be by the King, or his Commissioners, who represent his Person, an Appeal does not lie; but the King, of Grace, may grant a Commission of Review. Mo. 782.

(D. 23.)
Seizure of
Temporalities.
The Nature
of Temporal-
ties.

The King is Patron of all the Bishopricks in the Kingdom, which are of the King's Foundation. *Vide Ecclesiastical Persons*, (C. 2.)

So all the Bishops of *Wales* are of the Patronage of the King, and he ought to grant their Temporalities to them. 1 *Rol.* 882. l. 5.

So, the Bishops of *Ireland*. F. N. B. 169. G.

The Temporalities of a Bishop are all his Temporal Possessions, which belong to the Bishoprick. *Sav.* 52.

And, during the Vacancy of the Bishoprick, they belong to the King. 2 *Inst.* 15. *Mad.* 207.

And the King is seized of the Freehold. 1 *Rol.* 881. l. ult.

And shall have the Profits, take a Ward, present to a Church, &c. *Vide Esq. list*, (H. 5, 6.)

But by M. Ch. 9. H. 3. 5. *Custodiæ Archiepiscopatum Episcopatum*, &c. *vendi non debent*.

And therefore, a Subject cannot claim those Temporalities by Grant, or Prescription. 2 *Inst.* 15.

So, by M. Ch. 5. The King shall restore the Temporalities in the same Plight as he had them. 2 *Inst.* 14.

And a Commission of Oyer and Terminer goes, to hear a Trespass done in the Vacation. 2 *Inst.* 152.

So a Common Person shall have the Temporalities of an Abby, &c. of his Foundation. 2 *Inst.* 68.

(D. 24.)
How granted.

After a Bishop is elected and confirmed, the King makes Restitution of the Temporalities to him. *Bur. H.* 11.

So he may grant them after Election, and before Consecration. 1 *Rol.* 882. l. 15.

If the King limits no Estate in the Temporalities, yet the Bishop shall have the Fee. 1 *Rol.* 882. l. 20.

So, tho' the King limits only for Life, or Years; for that will be void. 1 *Rol.* 882. l. 20.

If a Bishop elect accepts Rent reserved upon a Lease by his Predecessor, the Lease shall not be affirmed by such Acceptance. *Pal.* 175.

But till a Writ for Restitution of the Temporalities to the Bishop, they are not vested in him, tho' he be a compleat Bishop. 1 *Rol.* 881. l. 50.

So,

So, after Restitution, the Bishop shall not have an Action for a Trespass done in the Vacation: For the *St. Marl.* 29. does not extend to him. 2 *Inst.* 152.

So, if an Election be without the King's Assent and Licence, he may refuse Restitution. *F. N. B.* 170. C.

So, for an enormous Offence in a Bishop, his Temporalties may be seised in *Manus Regis.* 2 *Rol.* 228. l. 20. (D. 25.) How seised.

As, if he be attainted for a Trespass *contra Pacem*; for, being a Prelate, a *Capias* does not lie against his Person. 2 *Rol.* 228. l. 25.

Or, for a Contempt, as upon an Attachment in Prohibition. 2 *Rol.* 228. l. 15, 3c.

Or, for not admitting a Varlet to his Corody. 2 *Rol.* 228. l. 15.

So, if he be found a Disturber in a *Quare non admittit* by the King. 2 *Rol.* 228. l. 17.

Or, be found guilty in a *Quare incumbavit*, after a *Non admittas* delivered to him. 2 *Rol.* 228. l. 10.

So, upon the Death of a Bishop, the King by his Prerogative shall have his Palfrey, Bason and Ewer, and Kennel of Hounds; and Process shall issue for them, if not compounded. *Sav.* 53.

During the Vacation of a Bishop or Metropolitan, the Spiritual Jurisdiction belongs to the Guardian of the Spiritualties. *Lind.* 33. v. *Vicar' General*. (D. 26.) Guardian of the Spiritualties.

And the Dean and Chapter, of Common Right, is Guardian of the Spiritualties, to a Metropolitan; as, to the Archbishop of *Canterbury*. 2 *Rol.* 223. l. 7, 22. But the Prior of *Christ-Church Canterbury* is said to be so. *Ibid.* l. 20, 50. Who shall be,

So, to the Archbishop of *York*. 2 *Rol.* 223. l. 25.

So, in inferior Bishopricks, the Dean and Chapter, of Common Right, is Guardian of the Spiritualties, and not the Metropolitan. 2 *Rol.* 223. l. 10. But this seems to be by Composition *Temp. H.* 3.

But where the Usage allows it, the Metropolitan shall be Guardian of the Spiritualties: As, the Archbishop of *York* shall be to the Bishop of *Durham*. 2 *Rol.* 223. l. 17.

So, by Prescription, an Archbishop may be Guardian of the Spiritualties to a Bishop within his Province. *Lind.* 33. v. *Vicar' Gener*'.

So, by Composition, *per Aliquem* by the Archbishop *electum ex Nominat' per Capitulum.* *Lind.* 33. v. *Vicar' Gener*'.

The Guardian of the Spiritualties regularly may exercise all Spiritual Jurisdiction. *Sav.* 52. (D. 27.) What he may do.

As, he may make Admission and Institution. 2 *Rol.* 223. l. 40.

So a Writ shall be directed to him for Trial of Bastardy, &c. and he shall make a Certificate of it. 2 *Rol.* 223. l. 44. *Vide Certificate*, (A. 4.)

So he shall prove Wills, grant Administration, Licences for Marriage, &c. *Sav.* 52.

(D. 28.) Jurisdiction Temporal.

The King by his Prerogative may make what Courts for the Administration of the Common Law, and in what Places, he pleases. *Vide Courts*, (A.) (D. 28.) Erection of Courts.

But the King cannot erect a Court of *Chancery*, or Conscience: for the Common Law is the Inheritance of the Subject. 2 *Rol.* 164. l. 30. *Vide Chancery*, (A. 3.)

Nor grant a Liberty *tenere Placita* according to the Course of the Civil Law. 2 *Rol.* 164. l. 25.

Nor grant, that the Court of *York* shall hold Plea by *Englisch* Bill of an Obligation, or other Matter triable at the Common Law. *R.* 2 *Rol.* 164. l. 32.

Nor grant, that such an one shall not be impleaded by Action. 2 *Rol.* 164. l. 20.

So the Erection of a new Court with a new Jurisdiction cannot be without an Act of Parliament. *4 Inst. 200.*

And, if it be erected, the Jurisdiction ought to be expressed: For nothing omitted shall be within such Jurisdiction. *Ibid.*

So the King cannot grant to a Court, that it may proceed according to the Civil Law. *2 Rush. App. 77.*

Nor can, by Charter or Commission, &c. alter the Common Law. *Ibid.*

For the Appointment of Justices, *Vide Post, (D. 37.)*

(D. 29.)
Grant of
Commissions.
Vide Justices,
(C. 2.)—G.
1, &c.)

The King may grant such Commissions as are warranted, or allowed, by the Common Law, or by Act of Parliament. *4 Inst. 163. 2 Inst. 51.*

Commissions are General, as to Persons, Crimes, &c. as, a General Commission of Oyer and Terminer. *4 Inst. 162.*

Or Special, when confined to particular Persons, Offence, or Place. *4 Inst. 163.*

As, upon a heinous Trespass done, which requires *festinum Remedium*. *Reg. 123.*

By the *St. W. 2. 13 Ed. 1. 29.*

Upon heinous Exactions, &c. by a Bishop and his Ministers. *Reg. 125. b.*

But the King cannot grant a Commission not usual, nor allowed by Act of Parliament. *4 Inst. 163. 2 Inst. 478.*

And therefore by the *St. 18 Ed. 3. St. 2. 1. ** A Commission of new Inquiry is declared void.

[* If not
expired?
Vide Cuy's
Statutes.]

So, by the *St. 18 Ed. 3. St. 2. 4. ** A Commission for assaying Weights and Measures.

So, a Commission for making of Boats, &c. *4 Inst. 163.*

So, a Commission to apprehend a Felon, and seize his Lands and Goods. *2 Inst. 54.*

So the King cannot grant a Commission for Inquiry only, without Power to hear and determine, *R. 12 Co. 31. Semb. 2 Rol. 164. l. 47.*

So a Commission ought to specify the Offences in the Commission, not in a Schedule annexed. *R. 12 Co. 31.*

So a Commission for a Trespass done, shall be only to the Justices of the one Bench or the other, or Justices in Eyre. *St. W. 2. 29. St. 2 Ed. 3. 2. Vide Justices, (E. 1, &c.—G. 1, &c.)*

[* By the *St.*
4 Geo. 2. 26.
All Commissions, &c. are to be in *English*.]

And it shall not be in *English*. ** R. 12 Co. 31.*

(D. 30.)
Grant of
Franchises,
and Liberties.

So, all Franchises are derived from the King: And therefore, the King may grant to another to have any Franchise or Liberty. *Vide Franchises, (A. 1.)—Liberties.*

As, a County Palatine, or Jurisdiction Temporal or Ecclesiastical. *Vide Franchises.—Vide Ante, (D. 9, &c. 28, 29.)*

Nomination of his Officers; as, Sheriff, Coroner, &c. *Vide London, (G. 1, &c.)*

So, the Execution of Things incident to the Office of another; as, *Retorna Brevium*. *Vide Retorn.*

Quod uti possit regalibus Libertatibus in Manerio suo. 2 Rol. 202. l. 35.

Omnem Potestatem, omnes Libertates, et Consuetudines, quæ regia Potestas conferre potest, omne Jus, et omne Dominium quod ad nos pertinet, &c. 2 Rol. 199. l. 20.

(D. 31.)
Of Nobility,
and Honour.

So the King, by his Prerogative, is the Fountain of all Dignity and Honour in his Realm. *Vide Dignity, (A.)*

So he may, by the Common Law, compel Persons of 20*l.* per Annum Inheritance to be Knights. *Vide Homage, (G. 4.)*

Or Persons, named to be Serjeants, to take the Degree. *2 Rol. 167. l. 10. Vide Ley, (D. 2.)*

So all Privileges are derived from the King; and therefore, the King may (D. 32.)
grant to another to have the Privilege of a Forest, Chase, Warren, Park, &c. Of Privileges.
Vide Chase.

To have a Fair or Market, or Toll in it. *Vide Market*, (C. 1, 2.)

To have Casual Profits; as, Wreck, Waifs, Strays, Deodands, Treasure-trove,
Royal Fish, Mines, Derelict Land, &c. *Vide Post*, (D. 49, 50.)—*Waife.*

So, Privileges in Trade. *Vide Trade*, (B.)

So the King, by his Grant, may exempt a Subject from a Charge, which by (D. 33.)
his Grant he may impose: As, he may grant to the Citizens of any Town, &c. Of Exemp-
to be quit of Toll for their Merchandize in every Town and City of England. tions.

2 *Rol.* 198. l. 37, 45. *Vide Toll*, (G. 2.)

So he may grant an Exemption from Toll in the King's Market, tho' due by
Prescription. *R.* 2 *Jon.* 119.

So the King, by Grant, may exempt Citizens from all *Tallagiis*, *Auxiliis*,
Vigiliis, & *Contributionibus Ratione Terrarum et Merchandisarum*, in a City. 2
Rol. 199. l. 5.

From Customs and Tallages. 2 *Rol.* 199. l. 25.

De Auxiliis Vicecom' de Foresta. 2 *Rol.* 199. l. 1.

So, *de Vastis*, *Affart* and *Regard. Foresta.* 2 *Rol.* 199. l. 2.

To be quit *de Foresta.* 2 *Rol.* 202. l. 5.

So he may grant Exemption from a Summons before Justices in *Eyre.* 2 *Rol.*
198. l. 40.

From Service in *Jurat*, *Affsis*, &c. 2 *Rol.* 199. l. 5.

So the King may grant Exemption from an Office; as, *quod non sit* Mayor,
Alderman, Sheriff, Escheator, Coroner, &c. *Ibid.*

But an Exemption from the Office of Constable, and other Offices in the
Cinque-Ports, does not exempt him from the Office of Sheriff. *R. Sav.* 43.

So an Exemption from Offices in the *Cinque-Ports*, does not exempt from
the Office of Sheriff in a County. *Ibid.*

So the King may grant an Exemption from Attendance upon Courts of Ju-
stice: As, of the Shire, Hundred: *De Sectis* of Shire and Hundred. 2 *Rol.*
198. l. 52.

De Placitis Foresta. 2 *Rol.* 199. l. 1.

So the King may grant an Exemption from a Charge, in which the King has
no Interest at the Time of the Grant: As, to a Spiritual Man, that he shall be
discharged of Tithes, when they shall be granted by the Clergy. 2 *Rol.* 198.
l. 25.

To a Man, that he shall not be impeached by a Recognizance, into which he
shall afterwards enter. 2 *Rol.* 168. l. 30.

But the King cannot grant an Exemption from the Jurisdiction of any Court,
if he does not erect another Jurisdiction of the same Nature; for that would be
a Failure of Justice: As, he cannot exempt a Town from the Admiralty Juris-
diction, if he does not grant a Power to have a like Jurisdiction there. 2 *Rol.*
201. l. 45.

So he cannot grant a Power to hold a Court of Equity; for that would be
in Derogation of the Common Law. 2 *Rol.* 192. l. 37. *Hob.* 63. *Vide Chan-*
cery, (A. 3.)

So, if he grants an Exemption from the Shire and Hundred, the Grantee
has thereby Frankpledge and Tourn within his own Land. *Semb.* 2 *Rol.* 203.
l. 20.

So the King cannot grant to any to be exempt from Punishment for any Of-
fence; as, for Felony, Trespass, &c. 2 *Rol.* 192. l. 32, 35.

So, if the King grants an Exemption from Customs, that exempts him only
from the antient Customs, which were the King's Inheritance. *Vau.* 161.

So a Grant of Exemption from all Taxes, Impositions, &c. does not exempt
from such Armour, &c. as he ought to find by Act of Parliament. *R. Sav.*
52.

So

(D. 34.)
Inhibition.
To restrain
within the
Kingdom.

So the King at his Pleasure may command any Subject, that he shall not go beyond Sea, or out of the Kingdom without his Licence. *F. N. B. 85. A. 3 Inst. 179. Vide Chancery, (4 B.)*

And if he does contrary, he shall be fined to the King for his Contempt. *F. N. B. 85. A. C.*

And such Inhibition may be by Proclamation; for the Party may abscond. *F. N. B. 85. C.*

Or, by Writ under the Great Seal, Privy Seal, or Signet; for every one is bound to take Notice of each of the King's Seals. *F. N. B. 85. A.*

And such Writ may be directed to the Party himself, commanding him not to go out of the Kingdom. *F. N. B. 85. B.*

Or, to the Sheriff, commanding that he take Surety of him *quod ne exeat*, and if he refuses to commit him to Gaol. *F. N. B. 85. D. Vide 3 Inst. 179.*

So it may be directed to Justices of Peace, as well as to the Sheriff, or to both. *F. N. B. 85. E.*

Every one, upon Surmise to the Chancery, may sue this Writ for the King. *F. N. B. 85. F. Vide Chancery, (4 B.)*

So the King for the Service of his War, or other Reasons of State, may lay an Embargo upon a Ship. *Per Saunders, Skin. 93.*

Adm. in Case of Emergency. Skin. 335.

So he may inhibit a publick Nuisance. *Semb. Skin. 630. Vide Post, (D. 36.)*

—*Action upon the Case for a Nuisance, (D. 4.)—Prohibition, (A. 3.)*

But, by the Common Law, every one, not restrained by Writ or Proclamation, might go out of the Realm to merchandize, or for other Cause, at his Pleasure. *F. N. B. 85. A. Dub. Dy. 165. 3 Inst. 179. R. Dy. 296. a.*

And the *St. 5 R. 2. 2.* which restrains all, except Lords, Merchants and Soldiers, is repealed by the *St. 4 Jac. c. 1. s. 22.*

So, if the King grants Licence for a Time certain, it cannot be revoked. *Dy. 177.*

(D. 35.)
To recall a
Subject, who
is out of the
Kingdom.

So, if a Subject goes out of the Kingdom without the Licence, or with the Licence of the King, and a Messenger, by Command under the Great or Privy Seal, summons him to come back into the Kingdom, and he does not return at the limited Time, he forfeits all his Goods and Lands to the King for his Contempt. *R. Dy. 128. b. 3 Inst. 179.*

And this extends to every Subject, Ecclesiastical, or Lay Lord, or other. *3 Inst. 179.*

If a Messenger serves such Command, he ought to make a Certificate of it in Chancery upon his Oath, and if such Certificate be transmitted to the Exchequer by *Mittimus*, a Commission goes to seize his Lands and Goods. *3 Inst. 180.*

But Merchants may abide beyond Sea, tho' it be not to merchandize. *Ibid.*

A King, in Amity with the King of England, need not deliver up Subjects of this Realm who fly to him. *Ibid.*

(D. 36.)
To restrain
Annoyances.

So the King, by his Prerogative, may command the Mayor and Bailiffs of any City or Borough, or Town Corporate, *Quod omnes Vicos et Venellas in Villa prædictæ de Fimis et aliis Fæditatibus mundari et mundat' conservari faciant.* *F. N. B. 185. D.*

And if it be not done, there shall be an *Alias, Pluries*, and Attachment. *F. N. B. 185. D.*

But such Writ does not lie for Villages in the Country, not Corporate. *Ibid.*

But the King cannot inhibit a lawful Occupation upon Pretence of Inconveniencies ensuing; as, he cannot suppress the making of Cards within the Realm. *R. 11 Co. 87. b. Vide Trade, (D. 1.)*

Or, the making of Dice, Bowls, Balls, &c. tho' they serve only for Pleasure. *11 Co. 87. b.*

Or, the making of Hawk's Hoods, Bells, &c. Dog's Couples, &c. *Ibid.*

So the King cannot restrain the Exercise by Football, Casting the Bar, Cock-fighting, *aut alios vanos Ludos.* 11 Co. 87. b.

(D. 37.) Nomination of Officers.

The King, by his Prerogative, has the Nomination of all publick Officers within his Kingdom. *Vide Officer*, (A. 1.—E. 1, &c.)

As, of the Chancellor, Treasurer, &c. *Vide Chancery*, (B. 1.)—*Courts*, (D. 8.)

Tho' claimed by Parliament, 15 Ed. 3. 2 Rol. 164. l. 45.

But the King cannot create a new Office, with a Fee to be taken of the Subject, without the Assent of Parliament; for that would be a Tallage upon the Subject, without his Consent in Parliament. 2 Inst. 533.

And therefore, where the King by Letters Patent made an Officer for the measuring of Cloth and Canvas, with a new Fee for it, the Grant was void. *Ibid.*

Or, for measuring Worsteads. 2 Inst. 534.

Or, for registering Inventories, Births, Aliens, &c. R. 12 Co. 116.

So the King cannot erect an antient Office with a new Fee to be taken of the Subject. 2 Inst. 533.

So the King cannot make a new Office by Letters Patent, for the Survey, or Correction, &c. of any Thing within the Jurisdiction of another Court. 4 Inst. 262.

As, for the issuing *Latitats*, &c. 12 Co. 117.

Or, the registering of Judgments, Recognizances, Fines, or Deeds, &c. *Ibid.*

Or, for the Inspection or Examination of Accounts, Deceits, &c. by the Officers of any Court. *Ibid.*

How Officers are created, and their Authority and Duty, *Vide Title Officer.*

(D. 38.) Prerogative as to Trade.

So the King, by his Prerogative, may erect Societies for the Management of *Vide Trade*. Trade, *Vide Trade*, (B.)

So, for the publick Good, the King may grant an Embargo upon a Merchant-Ship, &c. 1 Sal. 32. 3 Lev. 353.

But an Embargo shall not be allowed, if done for the Benefit of a private Trader or Company. R. 3 Lev. 353. 1 Sal. 32.

So the King cannot grant a Seisure of a Ship or Goods, if it trades without Licence of such a Company (admitting that he can give the Sole Trade there to a Company.) R. Skin. 135.

Neither can he give the Forfeiture of Goods by Charter; and therefore, if the King grants Power to the Dyers to search Cloths, and if they find any dyed with Logwood, they shall be forfeited, it shall be void. 8 Co. 125.

When the King shall take Reprisals, *Vide Ante*, (B. 4.)

(D. 39.) Prerogative as to the King's Revenue.

The King alone, by his Prerogative, can make or coin Money within his Dominions. R. Dav. 19. *Vide Money*, (B. 5.) (D. 39.)

And the Benefit of Coinage was Part of the King's Revenue. *Coinage.*

And the Duty, *Temp. Ed. 3.* was 5s. out of every Pound of Gold, out of which the King paid 1s. or 18d. to the Master of the Mint. Upon every Pound of Silver 8d. in Weight, or 1s. out of which the King allowed to the Master 8d. or 9d. *Hale Sb. Accompts 3.* *Vide Money.*

Temp. H. 5. The Duty for Coinage of a Pound of Silver was 15d. *Hale Sb. Acc. 3.*

[By Stat. 9 G. 3. c. 25. The Coinage Duties in Stat. 18 C. 2. &c. are made perpetual.]

(D. 40.)
Aids, &c.
Vide Parli-
ment, (H. 9.)

The King, by his Prerogative, is intitled to have Aid *pur faire son Fitz Cbi-
valer, ou son eigne File marier.* *Mad. 396. Vide Aide, (A.) **
[* *Vide the St. 12 Car. 2. 24. whereby this is taken away.*

(D. 41.)
Purveyance.
In Salt Petre.

The King, by his Prerogative, had the Privilege of Purveyance for Defence
of his Realm, or Provision of his Household.

As, the King has Purveyance of Saltpetre for Gunpowder, tho' it was in-
vented only in the Time of R. 2. for it would be to the Peril of the Kingdom,
if he could not take it within his Dominion, but must apply for it to Foreign
Princes. R. 12 Co. 12, 13.

And therefore, the King's Ministers may dig for Saltpetre to make Gun-
powder for the Safeguard of the Realm, in the Lands, Stable, Ox-house, or Cel-
lar of a Subject. R. 12 Co. 13.

In the Ruins of Buildings. 12 Co. 14.

And may throw down Mud-walls, if the House be well defended. *Ibid.*

But he cannot dig where he cannot leave the Place in the same Plight as be-
fore, without Prejudice to the Owner: As, in the Floor of a Mansion-house.
R. 12 Co. 13. R. 2 Rol. 169. l. 10.

Nor, in the Floor of a Barn, where Corn or Hay lies; for it would be use-
less for a long Time. 12 Co. 13.

Neither can he impair the Wall or Foundation of any House, Out-house,
&c. 12 Co. 13.

And where he digs, he ought afterwards to put it in as good Plight as be-
fore. 12 Co. 13, 14.

So, in Cellars, he cannot remove the Vessels of the Owner, and in Stables,
&c. must leave Room for his Horses and Cattle, &c. 12 Co. 14.

He cannot fix a Furnace, &c. upon his Soil, where it may prejudice him,
without his Consent. R. 12 Co. 14.

So he ought to dig in convenient Time before Sun-set. *Ibid.*

And cannot return to dig at the same Place in a long Time. 12 Co. 14.

And the Owner cannot be excluded from digging for Saltpetre also, in his
own Soil. R. 12 Co. 14.

So the King cannot grant, demise, or assign such Privilege to another; for it
is inseparable from the Crown. R. 12 Co. 13. R. 2 Rol. 187. l. 40.

And Saltpetre dug for the King ought to be employed for the Defence of the
Realm. R. 12 Co. 13.

(D. 42.)
In other Ne-
cessaries.

The King cannot take Gravel in the Land of a Subject, without his Consent,
for repairing of his Palace. 12 Co. 12.

Nor Timber, &c. 12 Co. 12.

Nor, to make a Wall, Bridge, &c. about his Royal House. *Ibid.*

(D. 43.)
Customs.
Magna Custu-
ma.
Vide Parlia-
ment, (H. 11.)

The Customs upon Merchandize, exported and imported, are the antient In-
heritance of the Crown. *Dav. 8. a. 10. b. Dy. 43. b. Vau. 161, 2. said,*
that they were originally granted by Parliament.

And they comprehend that which is known by the Name of *Magna & An-
tiqua Custuma*, viz. 6s. 8d. for every Sack of Wool, 6s. 8d. for every 300
Woolfells, and 13s. 4d. for every Last of Hides. *Dav. 8. Vide Parliament,*
(H. 11.)

And this Custom was as antient as the Crown itself. *Dav. 8. b. But Semb.*
that it began by Parliament, 3 *Ed. 1. 2 Inst. 59. 4 Inst. 29. Vau. 162. Forst.*
15.

The same Custom granted in Ireland. 2 *Rol. 177. l. 10, 35.*

And upon a Stranger the Custom paid was 10s. for a Sack of Wool, 10s.
for 300 Woolfells, and 20s. for a Last of Hides. 2 *Rol. 178. l. 15.*

(D. 44.)
Parva Custu-
ma.

Parva, five Nova Custuma was granted by Charter, 31 *Ed. 1.* before which
the King took as much as he pleased. *Dav. 8. b. 9. b.*

By which Charter it was ascertained, that the King should take only 3*d.* per Pound of Merchants Strangers for all Goods, imported or exported. *Dav.* 8. *b.* 2 *Rol.* 178. *l.* 25. besides 2*s.* *pro Dólio Vini*, 40*d.* *pro Sacco Lanæ*, *Lasto Cor.* and 300 Woolfells, &c. *Vide the Charter. Forst.* 22.

And there shall be two Receivers chosen for it in every Town and Port. 2 *Rol.* 176. *l.* 50.

Prisage is a Duty of two Tons out of a Ship laden with twenty Tons of Wine, (D. 45.) or more; one to be taken before the Mast, the other behind the Mast. *Dav.* 8. *b.* 4 *Inst.* 30. 1 *Rol.* 145. *Mad.* 525. 3 *Bul.* 3, 21. *Prisage, &c.*

It was insisted, that there ought to be two Tuns of a Ship laden with thirty Tons of Wine; but the King granted, that it should be taken as usual. 2 *H.* 4. 2 *Rol.* 162. *l.* 35.

Butlerage is 2*s.* per Ton for every Ton of Wine paid by Merchants Strangers in Lieu of Prisage, which was remitted to them by Charter, 31 *Ed.* 1. *Dav.* 8. *b.* 4 *Inst.* 30. 1 *Rol.* 145.

And ought to be paid when the Ship comes into Port, and breaks Bulk. 1 *Rol.* 140, 144. 3 *Bul.* 4.

And the Customs shall not be accepted till the Prisage delivered. *Sav.* 33, 4. So it shall be paid for Wine imported by a Corporation, tho' a Grant be, that none shall be taken *de Bonis Civium*; for this extends only to the Goods of each Citizen in his natural Capacity. 1 *Rol.* 142.

So, for Wine, which a Citizen and others jointly import. *Ibid.*

For Wine, which the Executor of a Citizen imports. 3 *Bul.* 4.

Or, which a Citizen, as Executor, imports. *Ibid.*

Or, which a Citizen imports, who has not his Habitation in the City. 3 *Bul.* 9, 14.

But the Barons of the *Cinque-Ports* claim to be free of Prisage by Prescription. 2 *Rol.* 163. *l.* 27. *Hard.* 308.

So others may be exempt by Prescription. 1 *Rol.* 146.

So Persons may be exempt by the King's Grant. 1 *Rol.* 142. as the Citizens of *London* are exempted for Wine imported there, but not for Wine imported elsewhere. *R. Hard.* 310.

And the Exemption shall be allowed, tho' the Citizen dies before Bulk broken. *Hard.* 302. *Noy* 97. 3 *Bul.* 1 *ad* 26.

So a Man, by the King's Grant, may have the Benefit of Prisage. *Dub.* 2 *Rol.* 187. *l.* 37. 1 *Rol.* 142.

So no Duty shall be paid for Prisage, if under ten Tons be *bonâ fide* imported; as, seven or eight Tons. *Hard.* 477.

Or, nine Tons, unless there be an exprefs Proof of Fraud. *Ibid.*

Yet, where nine Tons and an Half were imported, it was decreed that Prisage should be paid; for it is an apparent Fraud. *R. Hard.* 57, 218, 477.

So no Duty, if ten Tons laden, by Leakage, are reduced to nine Tons. *Hard.* 477.

So it shall not be paid, except where the Wine is imported from a foreign Kingdom by a Merchant, and not for private Use. 1 *Rol.* 145.

But by the *St.* 25 *Ed.* 1. 7. The *Maletolt* upon Wools, &c. shall be abolish- (D. 46.) ed. *Vide Parliament*, (H. 9, 15.) But other Customs not allowed.

And by the *St.* 36 *Ed.* 3. 11. Nothing shall be taken but the antient Custom. 2 *Rol.* 177. *l.* 25.

If the King grants to B. Goods seized by him from Pirates, no Customs shall be paid by the Patentee; for the King shall not pay Customs to himself. *R.* 2 (D. 47.) Customs not paid by a Patentee. *Rol.* 180. *H.* Lane 15.

So the King may grant to a Merchant Alien to be exempt from all Customs, except such as a Subject pays. *Vau.* 161.

So the King, by his Prerogative, may charge an Imposition upon the Subject (D. 48.) for his Benefit: As, he may grant a certain Rate for Things sold in a Town, *Impositions, &c.* *pro*

pro Muragio of the Town, or *pro Ponte reparanda*, or for the Security *Partium illarum*. 2 Rol. 171. l. 45. 50. 172. l. 5. 12 Co. 12. *Vide Toll.* (A.)

And may grant it for a limited Term, and that then it shall cease. 2 Rol. 171. l. 40, 50. 172. l. 5.

So, that a Man shall make the Wall of a Town, or a Bridge, *de novo*, and shall take so much for Goods sold, or which pass there. 2 Rol. 171. l. 25.

So, that any Person may erect a Ferry upon a Water next to his Land, and shall take so much for Passage. 2 Rol. 171. l. 30.

So the King may grant to another to have Toll in his Market, &c. 2 Rol. 202. l. 42. *Vide Market*, (F. 1.)

But the King cannot charge the Subject with an Imposition, where he has no Benefit by it, or a *quid pro quo*. 2 Rol. 272. l. 40. 2 Inst. 220.

So he cannot charge a new Impost upon any Merchant. 2 Inst. 58.

Nor levy new Customs. 2 Inst. 60.

Nor enlarge the antient Customs. *Ibid.*

So a Grant by the King, that a Merchant, who imports Wine at any other Port than the Port of S. shall pay treble Customs, is void. 2 Inst. 61.

So the King cannot grant, that a Merchant shall pay so much for searching or measuring his Goods. 2 Inst. 62.

That he shall not import Wine without paying so much, on Pain of Forfeiture. 2 Inst. 63.

That a Merchant shall pay 5 s. per Cent. for all Currans, or other foreign Commodity, imported. 2 Inst. 63. R. cont. in Exch. 4 Jac. Lane 30. 2 Rusb. 73.

So Merchants cannot, by their Consent, grant to the King a Tax upon their Goods; for their Wares would thereby be sold the dearer. 2 Rol. 173. l. 20, 25.

(D. 49.)
Casual Profits.
The Goods of
no Person.

The King, by his Prerogative, is intitled to all Goods which have no Owner: As, Wreck, *Flotsan*, *Jetson*, *Lagan*, &c. Of which, *Vide Wreck*, (A.)

So, to Waives, Strays, &c. *Mad.* 234. *Vide Waife*, (A. 1, 2.—F.)

To Goods forfeited, or confiscated, *Bona Felon'*, *Fugitivor'*, *Utlagator'*, et in *Exigend. possitor'*, &c. *Vide Waife*, (B.—C.—D.)

To Deodands, Treasure-Trove, &c. *Vide Waife*, (E. 1, 2.—G.)

To Lands, &c. which escheat. *Vide Escheat.*

Or come to the King by Forfeiture, Seizure, &c. *Mad.* 202. *Vide Forfeiture*, (B. 1, &c.)

So to Wards, Marriages, Reliefs. *Mad.* 216.

(D. 50.)
Royal Mines,
and Fishes.

As to Royal Mines, *Vide Waife*, (H. 1, 2.)

By the Common Law, and now it is declared by the *St. Præ. Regis* 11. *Rex habebit Wreccum Maris, Balænas, & Sturgiones capt' in Mari, vel alibi infra Regnum.* Pl. Com. 315. 7 Co. 16. a. *Dav.* 56. a. *Stamf. Præ. R.* 38.

So the Fishery of every navigable River, as high as the Sea flows and reflows, belongs to the King, by his Prerogative. 2 Rol. 170. l. 20. *Dav.* 56.

But every One may fish in the Sea, of Common Right. (*Mod. Ca.* 73.)

Tho' it flows upon the Soil of another.

But foreign Nations cannot fish in the *British* Seas, without the King's Licence. *Vide Ante*, (B. 1.)

So a Man, by Grant or Prescription, may have a free Fishery in navigable Rivers. *Cal.* 26. *Vide Piscary*, (A.)

So a Man, by Grant or Prescription, may have a several Fishery. *Cont. Mod. Ca.* 73. (*Sal.* 357.)

So he may claim Royal Fish, as *Balænas*, et *Sturgiones*, within his Manor.

So, by Grant, he may have a free Fishery in a Bay or Creek of the Sea. *Dav.* 57. a.

So Rivers not navigable, and the Fishery in them, of Common Right belong to the *Terre-tenants ex utraque Parte.* *Dav.* 56. a. 2 Rol. 170. l. 25.

Or, if it runs between two Manors, the one Lord has one Moiety, and the other the other Moiety. *Dav.* 57.

As to Remedy for encroaching on the Fishery of another. *Vide Piscary.* As

As to a Fine *pro Licentiâ concordandi* upon a Fine levied. *Vide Fine*, (E. 8.) (D. 51.)
 As to a Fine for Alienation without Licence, or Pardon of such Alienation by the King's Tenant. *Vide Alienation*, (A. 1, 2.) Fines.
 A Fine shall be paid in the Hanaper for the King's Writs. 8 Co. 59. b. Fine upon an Original.

As, upon every Original in a Real Action shall be paid in the Hanaper, 6s. 8d. for every Parcel of Land in Demand, which is of the Value of five Marks *per Ann.* 2 Inst. 511.

So, antiently, a Fine was paid for Liberty to have Right and Justice. *Mad.* 293. But by the *St. M. Cb.* 29. *Nulli vendemus, &c.*

To have an Inquisition taken upon any particular Point in Dispute. *Mad.* 300. For Expedition, or Respite of Proceedings in Law. *Mad.* 308, 309.

But by the *St. M. Cb.* 9 H. 3. 26 & 29. it was provided, *quod Nihil de cetero detur pro Brevis Inquisitionis ab eo qui Inquisitionem petit de Vitâ aut de Membris, (viz. for the Writ de Odio & Atiâ. 2 Inst. 42.) sed gratis concedatur.*

Nulli vendemus, nulli negabimus, aut differemus Justitiam, aut Rectum.

So, by the *St.* 8 Ed. 3. No Fine shall be for a Writ of Course, and Grace shall be for a Writ *de Gratia.* *Cot Ab.* 15.

So there was an antient Revenue of the King, to have a Fine for *Beau-pleader*, (D. 52.) which was set at the Will of the Judge of the Court, or reduced to Certainty by Consent, and annually paid. *H. Sb. A.* 35. For *Beau-pleader, &c.*

And it was originally imposed for bad Pleading to the Count, or Plaint, which was in Delay of Justice, and therefore a Contempt to the Court. 2 Inst. 123.

But by the *St. Marl.* 52 H. 3. 11. All Fines for *Beau-pleader* in Eyre, County, Hundred, or Court-Baron, are taken away.

And a Writ lies, if they are taken contrary to such Statute. 2 Inst. 123.

Yet Fines certain for *Beau-pleader* are not taken away by that Act. 2 Inst. 123.

So, a Fine for Suit. *H. Sb. A.* 35.

For not attending the Sheriff's Tourn. *Ibid.*

For Affart, or Purpresture, in the King's Waste or Forest. *H. Sb. A.* 36. *Vide Post*, (D. 54.)

Fines in the County-Court, Tourn, or other Court of the Sheriff. *H. Sb. A.* 43. *Vide Leet*, (N. 1, &c.)

So there was an antient Revenue of the King, to have a Fine for a Grant of Liberties. *Mad.* 272, 588. (D. 53.) For a Grant of Liberties, &c.

And if the Fine proffered was not accepted, he might make an Augmentation, which was called *Crementum Finis.* *Mad.* 273.

So, to have an Office, or surrender it. *Mad.* 315.

To be bailed, or delivered out of Prison. *Mad.* 341.

But if he had not the Thing, for which the Fine was proffered, the Party should be acquitted of the Fine; tho' sometimes a Fine was paid for such Acquittance. *Mad.* 272.

So the King, by his Prerogative, might fine Persons, having 20l. *per Ann.* (D. 54.) who refused to be Knights. *Vide Homage*, (G. 4.) For a Misdemeanor.

Or Persons, who refused to take the Degree of Serjeant, when commanded by the King's Writ. 2 Rol. 167. l. 15. *Vide Ley*, (D. 2.) *Vide Leet*, (N. 1, &c.—O. 1, &c.)

So a Fine may be imposed for the Penalty of an Offence, or Contempt, committed against the King. *Co. L.* 126. b. 8 Co. 59. b.

By whom it may be imposed, for what Cause, and in what Manner, *Vide Leet*, (N. 1, &c.—O. 1, &c.)

A Fine may be imposed, where a Man is indicted and convicted for any Trespas or Misdemeanor.

Or, for Purpresture, or other Trespas in a Forest. *Mad.* 272. *Vide Ante*, (D. 52.)

The King, by his Prerogative, shall have all Fines paid for Writs, or imposed for Crimes. (D. 55.) Fines, &c. belong to the King.

And therefore, if, upon a Conviction for Extortion, a Man be fined to pay so much to the Party grieved, (unless where by Act of Parliament it is directed,) it is Error. *R. 11 Car. 1. 1 Rol. 220. l. 10.*

And a Fine shall not be allowed by the Court to the Patentee of the King, till the Patent pleaded, or an Order by the Court of *Exchequer*. *Skin. 12.*

(D. 56.)
By whom
levied, and
how.

The Sheriff, by his Office, ought to collect, and account for all Fines due to the King within his County. *Vide Viscount, (C. 5.)*

If an Under-sheriff, having Process for levying an Amerciament due to the King by *A.* be indebted to *A.* by Bond to a greater Sum, and he pays to *A.* the Surplus, and takes up his Bond; the Debt is levied, and *A.* ought to be discharged. *R. Lane 74.*

(D. 57.)
When they
shall be
estreated.

So, if Fines belong directly to the King, they may be estreated into the *Exchequer*; as, a Fine imposed in the King's Leet. *Hard. 471.*

[When a Recognizance is estreated in *B. R.* it must be carried to the *Exchequer* by the puisne Judge. *Rex v. Ridpath. Fort. 358.*]

[When a Fine on an Indictment is estreated, it cannot be discharged without Attorney-general's acknowledging Satisfaction in the *Exchequer*. *Rex v. Carr, in Sc. P. 1718. Bunb. 40.*]

[*B. R.* cannot receive a Fine set by an inferior Court. *Rex v. Elliot, M. 1 G. 2. Str. 786.*]

[By *Stat. 32 G. 2. c. 14.* Post-fines shall be paid to the Receiver of Pre-fines at the Alienation-office, who shall pay them to the Sheriff or the Grantees, on producing *Quietus*, or Schedule of the foreign Opposer.]

By the *St. 22 & 23 Car. 2. 22.* All Fines, Post-fines, Issues, Amerciaments forfeited, Recognizances, Monies paid in Lieu or Satisfaction of any of them, and all Forfeitures whatsoever set, &c. in *B. R. C. B.* or *Exchequer* from the Beginning of *Hilary Term* to the Beginning of *Trinity Term*, shall be estreated into the *Exchequer* yearly, the last Day of *Trinity Term*; and all others shall be estreated the last Day of *Hilary Term*, on Pain of 50*l.* to the Officer, who ought to estreat, &c.

Provided, that Issues and Post-fines in *C. B.* and Issues in the Office of the Pleas in the *Exchequer* shall be termly certified, as before.

And all set, &c. by a Judge of Assize, Clerk of the Market, and Commissioners of Sewers, between *Michaelmas* and *Easter*, shall be estreated before the first Day of *Trinity Term*, and all others before the first Day of *Hilary Term*, on the like Penalty.

And all Clerks of the Peace, and Town-Clerks, shall deliver to the Sheriff within twenty Days after *Michaelmas*, a perfect Estreat of all set, &c. at their Sessions before *Michaelmas*; and those at other Sessions on the second Monday after *Cras. Animarum* yearly, on the like Penalty.

And no Officer shall discharge, or conceal, or wittingly miscertify any Fine, &c. on Pain of treble the Value.

And when a Fine, &c. is estreated, &c. Process of Green-wax shall go forth for levying the same.

By the *St. 4 & 5 W. & M. 24.* this Act was made perpetual.

And by the *St. 3 Geo. 15.* Over and above the said Penalties, the Barons of the *Exchequer* may amerce any Clerk of Assize, of the Peace, of the Sewers, Market, Town-Clerk, &c. for omitting to return Estreats in due Time; to be levied as other Amerciaments used in the said Court to be levied.

[By *Stat. 4 G. 3. c. 10.* The Barons of *Exchequer*, on Affidavit and Petition, may discharge Recognizance estreated, without a *Quietus* sued, except where other Debt is due to the Crown, or for contraband Trade, or assaulting Officers.]

(D. 58.)
Amercia-
ments.
Vide Lett.
(O. 1, &c.)

So the King, by his Prerogative, shall have all Amerciaments; and this was Part of the King's Revenue. *Mad. 365.*

So the King, by his Patent, may grant all Issues, Amerciaments, &c. by general Words. *2 Rol. 194. l. 40.*

And they shall be estreated into the *Exchequer*, and the Grantee shall sue to the Court there by Petition. *Semb. 9 H. 6. 27. b.*

Otherwise, if the Grant adds, to be levied, *per se aut Ministros suos.* *Semb. 9 H. 6. 27. b.*

But the Patentee shall not have, by those general Words, Issues, Fines, or Amerciaments in any Court of *Westminster*, without express Mention of them. *2 Rol. 196. l. 5.*

Nor, before Justices of Peace, in *Eyre*, Assise, or Gaol-Delivery. *2 Rol. 196. l. 5.*

Nor, before the *Marshalsea*, or Clerk of the Market. *2 Rol. 196. l. 5.*

Nor, Fines, Amerciaments, &c. of Constables or other Officers, not expressly named. *2 Rol. 196. l. 10. 1 Rol. 142.*

Nor, Amerciaments of Tenants, who hold of the King and another. *1 Rol. 142.*

Nor, Pains, &c. inserted in a *Subpœna*, Injunction, *Habeas Corpus*, or other Writ. *Hard. 377.*

The Escheat of all Lands, which are held of the King, belongs to the King. (D. 59.)
Vide Escheat, (A. 1, 2.)

As, of all Lands in *London*; for they are held of the King. *F. N. B. 144. G.*

So, if a Man be attainted for High Treason, the Escheat of all his Lands belongs to the King, of whatever Lord they are holden. *Vide Forfeiture, (B. 5.)*

By the *Stat. Prær. R. 17 Ed. 2. 12.* The King shall have the Escheat of the Lands of all Normans and Aliens, *cujuscunque Feodi fuerint*: And this was only an Affirmance of the Common Law. *Stamf. Prær. R. 38.*

So, by the *Stat. Prær. Reg. 17 Ed. 2. 14.* The King shall have the Escheat of the Tenants of a Bishop, for an Offence *Tempore Vacationis cum Temporalia sunt in Manu Regis.*

And the King shall have the Escheat, if the Offence was when the Temporalities were in the King's Hands; tho' they were restored before Conviction. *Stamf. Prær. R. 41. b.*

So, by the *Stat. Prær. Reg. 17 Ed. 2. 1.* The King shall have the Wardship of Lands, which his Tenant in Capite by Knight's-Service had in his Seisin at his Death, *de quocunque tenuerit, usque plenam Ætatem Hæredis.*

And by the *Stat. Prær. Reg. 17 Ed. 2. 2.* He shall have the Marriage of every one, whose Lands he hath in Ward.

And this, tho' there be a Devise to Charitable Uses. *R. Jon. 428.*

So, by Common Law, confirmed by the *Stat. of Marl. 52 H. 3. 16. & Prær. Reg. 17 Ed. 2. 3.* The King shall have *primer Seisin* of all Lands, of which his Tenant in Chief was seised in Fee. *Stamf. Prær. 12. **

[* *Vide the St. 12 Car. 2.*

24. whereby all Wardships, Liveries, *Primer Seisins*, *Ouster le Mains*, Values and Forfeitures of Marriage, &c. are taken away.]

So the King, generally, shall have all Forfeitures for High Treason. *Vide (D. 60.) Forfeiture, (B. 1, &c.)*

And the King, by Privy Seal, may enable a Court to compound, or discharge such Forfeitures.

Or, after Forfeiture, may grant the Penalties to another. *7 Co. 37.*

But such Grant will be void before the Penalty forfeited. *R. 7 Co. 37.*

So the *Exchequer*, having a Privy Seal to compound, may compound after such Grant. *R. Hard. 334, 395.*

[The Barons of *Exchequer* (by the Privy Seal) may discharge a Penalty fixed by Statute (after Judgment) as well as a Fine set by the Judgment of a Court. *Rex v. Dibbens, H. 26 G. 2. Parker 165.*]

The King cannot grant the Penalty, to be levied otherwise than the Statute directs. *7 Co. 37.*

[The Crown, or its Grantee, on Forfeiture takes the Estate subject to all Charges binding the Party, though voluntary, if no Fraud; but not subject to Debts at large; and has the same Equity to be relieved against a Conveyance, as the Party had for Fraud on him. *Duke of Bedford v. Coke, H. 1750. 2 Vezey 116.*]

So

(D. 61.)
Derelict
Lands.
What belong
to the King.

So Land, derelict by the Sea, belongs to the King, by his Prærogative; for, when the Dominion and Soil of the *British* Sea belong to him, the Derelict Land, by Consequence, shall be his. *Cal. 25.*

So, an Island which rises in the Sea. *Cal. 22.*

So, where a large Tract of Land is derelict suddenly; tho' the Lord of the Manor claims, where there is a gradual Accession to Land adjacent. *2 Rol. 170. l. 1.*

So the King may grant derelict Lands to another.

But if he grants *omne Solum, &c. tali Marisco adjacen' modo inundat', quod ad aliquod Tempus imposterum recuperat' foret per Relictionem Maris, vel aliter*, it does not pass Lands which afterwards became derelict. *R. 2 Lev. 171. Ray. 241.*

So, if a Wharf be erected under low-water Mark, it belongs to the King. *Al. 11.*

Or, between High and Low-water Mark. *Dub. Al. 11.*

(D. 62.)
What not.

But if the Sea overflows the Land of any Person, and after forty Years flows back again, the Owner shall have the Land, and not the King. *2 Rol. 168. l. 47.*

So, by Prescription, the Lord of a Manor, adjacent to the Sea, may claim Lands derelict by gradual Decrease, in respect of his Loss when the Sea flows upon his Land. *Cal. 27. 2 Rol. 168. l. 50. 169. l. 40, 50.*

So the Soil between the Ebbing and Flowing of the Sea, may be Parcel of a Manor. *R. 2 Rol. 170. l. 5.*

(D. 63.)
Possessions of
the Crown.

All the Lands in the Kingdom are holden *mediate vel immediate* of the King, tho' the King holds of no one. *Co. L. 1. Vide Tenure, (A.—B.)*

So many Lands and Tenements are now *Demesnes* in the Hands of the King. *Mad. 202. Vide Antient Demesne.*

Other Lands and Tenements are demised by the King in Fee-Farm, which Rents belong to the King. *Vide Rent, (C. 3.)*

So the King may have an Inheritance, which he may grant in Possession, or Reversion; as, an Office, &c. or in Possession only; as, a Nomination to a Corody, Benefice, &c. or which he may grant, or hold in his own Occupation; as, Lands, &c. *R. 8 Co. 55. b.*

(D. 64.)
The King
seised *Jure*
Coronæ.

All Lands and Tenements, which the King has, belong to him in Right of his Crown, and are called, *Sacra Patrimonia*, or, *Dominica Coronæ*. *Co. L. 1. b.*

Tho' they were Lands and Tenements, of which he was seised in his private Capacity before the Descent of the Crown to him. *Per Holt Skin. 603. Pl. Com. 213. b.*

Or, which descended to him as Heir to his Mother: As, the Dutchy of Lancaster. *Pl. Com. 214.*

So, if a Statute gives to the King, or vests in him, his Heirs and Successors, any Lands, without saying, *as Parcel of his Crown*, or to such Effect; yet he has them, as King, in *Jure Coronæ*. *R. Pl. Com. 105. a.*

(D. 65.)
Lands con-
cealed.

So, if Lands belong to the King by Attainder, or other Title, tho' they are concealed for a long Time, and not in the King's Possession, the King may grant them to another; for no Time runs against the King.

But nothing shall be said to be concealed Land, which comes to the Notice of the King by Matter of Record: As, if Land be expressly found by Office, to have come to the King; or be granted, or surrendered to the King. *R. Cro. El. 508.*

(D. 66.)
How the
King may be
intituled.
By Matter of
Record.

In all Cases, where the King is intitled to an Inheritance or Freehold, he shall be intitled by Matter of Record, or by Matter in Deed found by Office upon Oath, or by Matter in Deed without Office. *4 Co. 54. b.*

If

If the King be intitled by Matter of Record, it shall be by Conveyance upon Record, by Judgment, or by Office. 4 Co. 54. b.

The King may take by Conveyance by Fine, or Deed inrolled. 4 Co. 54. b. Godb. 441.

And it is sufficient, that the Deed be delivered to the Officer in Court, to be recorded, tho' it be not inrolled; for the Indorsement by the Officer, *that A. came on such a Day, &c. and delivered the Deed in Court to the Use of the King*, is sufficient. R. Yel. 30. But where A. leased to the King, and acknowledged it before Commissioners, with a Prayer that it be inrolled, which is indorsed; if the Deed be not inrolled, it is void. R. Lane 31, 35, 60. Vide Patent, (E.)

So the King cannot take a Chattel Real, as a Lease, &c. but by Deed inrolled upon Record. R. Lane 31, 35, 60.

And the Inrolment ought to be in the Life of the Lessor and Lessee. R. Lane 61.

So the King will be intitled by a Judgment, whereby a Man is attainted for Treason or Felony; for the Attainder appears by the Record. (4 Co. 57. b.)

But a Deed, whereby Land is conveyed to the King, put into Court, without more, is not sufficient. Yel. 30. Cont. Mo. 676. Vide Patent, (E.)

So the King may take by Devise, tho' not of Record. Mo. 193.

So a Confirmation by a Dean and Chapter, to a Grant of a Bishop to the King, does not need Inrolment. Lane 62.

So in all Cases, where a Subject shall not have Possession, in Deed or in Law, without Entry, the King will not be intitled without Office found, or other Matter of Record. Stamf. Prær. R. 55. b. (D. 67.) By Office. When necessary.

As, if the King's Tenant aliens in Mortmain, or without Licence, the King's Title must be found by Office. Stamf. Prær. 55. b.

If the King claims upon a Forfeiture. Semb. Sav. 1. R. Cro. Car. 173. Jon. 78, 217.

Or, a Condition broken. Stamf. Prær. 55. b. Sav. 70. 2 Rol. 215. l. 15.

So, if the King claims the Lands of an Idiot, Lunatick, &c. the Person ought to be found an Idiot, &c. by Office. Stamf. Prær. 55. b.

[The Court should not grant a *melius inquirendum*, unless on pregnant Matter, that the Finding of the former Commission was mistaken. Knight v. Dupleffis, T. 1754. 2 Vezey 555.]

[The Finding on a Commission in another County, (especially if corroborated by Evidence of Witnesses) is such pregnant Matter. Ibid.]

So, if he claims the Year, Day, and Waste of a Felon attainted. Stamf. Prær. 55. b.

If he claims the Temporalities of a Bishop, for a Contempt. Ibid.

So, if he claims a Freehold or Inheritance as forfeited for a Contempt. Sav. 8.

But where an Office does not give a Title, but is found for the King's Information of his Title; after Office found, the King shall avoid all *mesne* Acts; for it relates to the Commencement of the Title in the King. R. 2 Cro. 82.

[Notice of issuing a Commission for an Inquest of Office, to inquire whether Lands are not escheated, shall not always be given, but on Circumstances the Court will grant it. Rex v. Daly, T. 1749. in Sc. 1 Vezey 269.]

If the King's Title be found to Lands and Tenements, the King shall be in Possession immediately by the Office, without Seizure. 9 Co. 95. b. If the Possession was vacant. Stamf. Prær. 54. b. 4 Co. 58. a. (D. 68.) When it is sufficient, without Seizure, or not.

So, if it be found, to a local Office, or of which continual Profit may be taken. 9 Co. 95. b.

So in all Cases, where at the Time of the Office the Possession was vacant. Stamf. Prær. 54. b. 4 Co. 58. a.

But if the King's Title be found by Office to an Incorporeal Inheritance (as an Advowson, &c.) the King shall not be in Possession before Seizure; for if the King, after Office, presents, the Defendant in a *Quare Impedit* may traverse the

the King's Title, without traversing the Office. 9 Co. 96. a. *Stamf. Prær.* R. 54. b.

So, if any other, except him in whose Right the King claims, be in Possession at the Time of the Office found, the King shall not be in actual Possession till Seizure. *Stamf. Prær.* 54. b. 4 Co. 58. b.

(D. 69.)
When, without a Scire facias, or not.

So an Office is sufficient for the King, without a *Scire facias* against the Party, where a Common Person may enter, or seise, without an Action. 9 Co. 96. b.

As, if a Cause of Forfeiture of an Office be found by Office, the King may seise it, without a *Scire facias*. R. 9 Co. 95, 96.

But where a Common Person cannot enter, or seise, without having an Action, the King, after Office, ought to have a *Scire facias*: As, upon Waste, *Cessavit*, &c. 9 Co. 96. b. for the Office intitles the King to an Action only, not to Entry. *Stamf. Prær.* 55. a.

So, if a Grantee of the Custody of a Forest, commits a Forfeiture by cutting down Wood, &c. which is found by Office; there ought to be a *Scire facias*, to which the Grantee may answer. R. Sav. 1.

So, if the King's Title appears by two distinct Records, the King shall not be in Possession before a *Scire facias*, tho' a Common Person in such Case might enter without Action, except in special Cases: As, if an Office finds that the Manor of D. is held of the King, and it appears by a Fine, that the Manor of D. is aliened in *Mortmain*, the King ought to have a *Scire facias*, before Seizure; for it is possible, that there are two Manors of D. 9 Co. 96. a.

So, if the King does not seise within a Year and a Day, after Office found, he ought to have a *Scire facias* before Seizure. *Stamf. Prær.* 54. b.

(D. 70.)
When an Office is not necessary.

But if the King's Title appears by other Matter of Record, an Office is not necessary. *Stamf. Prær.* 56. a.

So, if a Possession in Law be cast upon the King, no Office is necessary, but the King may seise without it: As, if the King has a Title by Descent, in Remainder or Reverter; for the Freehold is cast upon the King by Law. *Stamf. Prær.* R. 54. a. 4 Co. 58.

Or is entitled by Escheat. *St. Prær.* R. 54. a. R. Sav. 7.

Or, by his Seigniorship or Prerogative; as, by Reason of Wardship, *Primer Seisin*, &c. *Stamf. Prær.* R. 54. a.

So, if entitled to the Temporalities of a Bishop in the Time of Vacation. 9 Co. 95. b. *Stamf. Prær.* 54. a.

So, if an Estate granted by the King determines by a Condition broken, the King shall be seised, immediately before the Breach found by Office. 2 Rol. 184. l. 10. Sav. 70. where the Breach is apparent upon Record. 2 Rol. 215. l. 5, 20.

As, if the King leased upon Condition, that if the Rent be not paid at the *Exchequer* such a Day, it shall be void, &c. The Non-payment appears upon Record. *Dub.* 2 Rol. 216. l. 5.

Tho' the Breach be by Matter in *Pais*; as Waste, Non-payment of Rent, &c. 2 Rol. 184. l. 10, 15.

So, if an Estate be granted to A. for Life, Remainder to the King, upon Condition to be void upon Tender of Money to A.; by a Tender, the Remainder to the King will be divested without Office. R. Mo. 546. *Vide Post*, (D. 89.)

So, where the King ought to have Chattles, or Profits of Lands for a Contempt, he may seise, without Office: As, upon an Outlawry the Goods of a Prior Alien, &c. R. Sav. 8.

A Presentation to a Church upon an Avoidance by Simony, or otherwise. 2 Vent. 270.

A Nomination to an Office void by the *St.* 5 & 6 Ed. 6. 16. by Sale of the Office, &c. R. 2 Vent. 270.

So, by the *St.* 33 H. 8. 20. the King shall be in actual Possession of all Lands, &c. of any attainted of High Treason, without Office. *Jon.* 72.

But

But tho' the King be seised for a Condition broken, which determines the Estate, he cannot grant it to another, till the Breach is found by Office: As, if the King leases, rendring Rent, upon Condition to be void for Non-payment, he shall not lease to another till Office found, that the Rent was not paid. *R. Sav. 70.*

If the King be seised of Lands or Tenements by Matter of Record, he cannot be disseised or ejected; but if any one enters, he will be an Intruder upon the King's Possession. *Stamf. Prær. R. 56. b.*

(D 71.)
Intrusion
upon the
King:
What shall
be.

And therefore, if a Man enters upon the King's *Demesnes*, and takes the Profits, it will be Intrusion; for, as the King takes only by Matter of Record, he cannot be ousted of his Possession, but by Matter of Record. *Co. L. 277. a.*

So, if he enters upon a Possession cast upon the King by Descent, Escheat, &c. before Entry by the King. *R. Sav. 7. 4 Co. 58.*

So, if an Heir, in Ward of the King, enters after his full Age, before Livery. *R. 2 And. 210.*

Or, if the Heir of the King's Tenant enters, after finding for the King, before Livery. *Sav. 55.*

So, if a Man enters upon a Farmer or Committee of the King, it will be Intrusion, and does not oust the King. *Stamf. Prær. R. 56. b. Fitz. Prær. 12.*

So, if the King's Tenant holds over his Term. *Hard. 25. 2 Rol. 215. l. 10. Vide Estates, (I. 2.)*

So, if a Man ousts a Lessee for Years of the King, an Information of Intrusion lies; for a Lessor shall have an Affise, if his Lessee for Years be ousted. *Sav. 69.*

An Intruder upon the King does not gain any Freehold in the Land. *Fitz. Prær. 12.*

By the *Stat. Prær. R. 13. Si Hæres ingreditur* (viz. after Office found upon the Death of his Ancestor Tenant *in Capite*), *nullum accrescit ei liberum Tenementum; Et si obierit, &c. Uxor ejus non habebit Dotem, eo quod Vir suus intravit per Intrusionem, &c. Stamf. Prær. 40.*

And therefore, where any intrudes or enters upon the King's Possession, the King shall not be put to Affise, or Ejectment. *Stamf. Prær. 56. b.*

So, if he enters upon the King's Committee, or Farmer, *Stamf. Prær. 56. b. Vide supra et infra.*

So an Intruder cannot make a Lease to maintain an Ejectment. *Al. 11. Vide infra.*

Neither can he maintain Trespass, tho' he be possessed several Years; for the Trespasser shall answer to the King for his Wrong, and he shall not be punished twice. *Pl. Com. 545. b. Cont. All. 11. Per 3 J. acc. others cont. Godb. 133.*

So he cannot make a Feoffment. *R. 2 And. 210. Sav. 32, 55.*

So a Fine by him will be void. *2 And. 210. Sav. 55.*

But if the Heir of Tenant *in Capite* enters before Office found, he has Seisin. *Stamf. Prær. 40. b. Sav. 55.*

So, if a Stranger enters by Title, or without Title, upon Land in Ward of the King, before Office found for the King. *Stamf. Prær. 57. a.*

So, if Tenant in Tail, Remainder to *A.* in Tail, Remainder to the right Heirs of Tenant in Tail, makes a Feoffment, it will be a Discontinuance; tho' as to the Reversion he had not paid *Primer Seisin* to the King. *R. 2 And. 210.*

So, if Tenant in Tail, Remainder for Years to *A.* Remainder to Tenant in Tail in Fee, and *A.* assigns to the King, and then Tenant in Tail makes a Feoffment, it will be a Discontinuance. *2 And. 210.*

So an Heir may make a Lease, Bargain and Sale, &c. which enure as a Contract. *Sav. 55.*

So, if *A.* enters upon the King's Farmer, and leases to *B.* he shall maintain an Ejectment; for *A.* gained the Estate of the Farmer. *R. 3 Leo. 206. Vide supra.*

If a Man intrudes upon the King's Lands, an Information for the Intrusion lies in the Name of the Attorney-General. *Pl. Com. 547. 1 Co. 16. b. Co. Ent. 372, 376. F. N. B. 90. I.*

(D. 72.)
How he shall
be redressed.
By Informa-
tion of Intru-
sion.
And

And it is sufficient, tho' it be general, that the King was seised of certain Lands, without describing the particular Species, or Quantity; for it is in the Nature of a Trespass *quare Clausum fregit*. *Sav. 48.*

If an Intruder cuts the Trees, or takes the Goods of the King, an Information lies also against his Executor. *R. Sav. 40.*

So the King may have Trespass *quare Clausum fregit*, *Herb' depast' fuit*, *Arbores succidit*, &c. *F. N. B. 90. I.*

(D. 73.)
What Process
upon it.

The Process upon an Information shall be a *Venire, Distringas*, and afterwards a Writ out of *Chancery* directed to the Treasurer and Barons. *4 Inst. 110. 2.* whether this extends to Process upon an Information? *Vide Information*, (D. 1.)

But by the *St. 21 Jac. 14.* If an Information of Intrusion lies, a *Scire facias* shall not be brought to put the Defendant to plead specially.

(D. 74.)
Plea to such
an Informa-
tion.
Vide Post,
(D. 85.)

At Common Law, upon an Information of Intrusion, the King, by his Prerogative, might put the Defendant upon shewing his Title specially. *Dy. 238. b.*

And if he pleaded, *Not Guilty*, he should be immediately put out of his Possession: For a Title for the King appears upon the Information, if no Title appears upon Record for the Defendant. *4 Inst. 116.*

And if the Defendant shews an insufficient Title in Form, the Attorney General may demur. *Dy. 238. b.*

A Plea of a Special Title in the Defendant concludes with a Traverse of the Intrusion. *Pl. Com. 548.*

But the Defendant might plead, *Non intrusit*, generally. *Semb. Sav. 4.*

Or, *Not guilty*. *Sav. 66.*

And by the *St. 21 Jac. 14.* If the King, or those claiming under him, or those, under whose Title the King claims, have not been in Possession, or received the Profits within twenty Years, the Defendant may plead the General Issue, and shall not be ousted of his Possession, till the Title be found or adjudged for the King.

So, if he pleads so much as shews, that the Defendant has Title to the Possession, it is sufficient; for an Information of Intrusion is in the Nature of Trespass: As, if the Defendant by her Plea shews, that she has a Jointure of a third Part, without answering to the Residue; for by that she has the Possession of the Whole in Common with the King. *Semb. Mo. 370, 376.*

So a Terre-tenant may plead Payment, or Matter which goes in Discharge of the Land, without shewing a Title. *Hard. 230.*

If in an Information for Intrusion the Defendant pleads his Title, he ought to shew a good Title. *Mo. 385.*

And therefore, if Intrusion be alledged in *M. Marsh*, it is not sufficient to shew a Grant by Patent of *S. Marsh*, without an Averment, *Quæ est eadem*. *Sav. 48.*

And if he pleads such Grant, and concludes with a Traverse, *absque hoc* that he is guilty of the Land in the Information, it is bad. *R. Sav. 34.*

If he pleads that *A.* was seised, and died seised, and the Land descended to the Defendant; for a Descent does not bind the King. *R. Sav. 45.*

If he pleads, that an Abbot and Convent, seised in Fee, leased for Years to *A.* which Estate the Defendant has; for he cannot make Title to a Term by a *Que Estate*. *Semb. Dy. 238. b.*

But if the Title shewn by the Defendant be defective in Form, and the Attorney General does not demur, but joins Issue upon a Fact alledged, which is found against him, he shall not afterwards take Advantage of the Defect. *Dy. 238. b.*

[Defendant cannot plead several Matters by *4 Ann. c. 16.* for Amendment of the Law. *Attorney-general v. Allgood. P. 16 G. 2. Parker 1.*]

(D. 75.)
Replication.

If the Plea alleges several Facts, the King by his Prerogative may traverse them All, tho' a Common Person ought to traverse but one. *Sav. 19.*

If the Plea alleges a Title, which avoids the Possession in the King supposed by the Information, the King need not maintain the Information, but may traverse the Title alledged by the Plea. *R. Sav. 61. Vide Post*, (D. 85.)

But

But it is sufficient, if the King, by his Replication, traverses so much of the Title, as encounters the Information, without answering to the whole Title alledged by the Defendant; as, if an Information be for Intrusion in the Moiety of a Manor, the Defendant says, *A.* was seised of the Whole, and died seised, by which there was a Descent to the Defendant; it is sufficient to traverse, *absque hoc*, that he died seised of such Moiety. *R. Sav. 61.*

If Intrusion be alledged in twenty Acres, and the Verdict finds the Defendant *Guilty only in twelve Acres, and in the Residue Not Guilty*, Judgment shall be for so much, and he who pursues for the King, shall take Possession at his Peril. *R. Sav. 28.* (D. 76.) Verdict.

If a Declaration be for Intrusion in twenty Acres in *A.* and twenty Acres in *B.* and the Defendant is found *Guilty of ten Acres*, without saying, in which Vill, yet it shall be good. *Dub. Sav. 35.*

If there be a Verdict for the King, Judgment shall be for the King, though the Defendant dies. *Sav. 57.*

The Judgment in an Information for Intrusion for the King, shall be, that the Defendant *amoveatur de Possession*. *Sav. 35.* The Judgment shall be, *Quod* Judgment, *capiatur pro Fine*, and thereupon there shall be an Injunction for the Possession; and Execution. for the King is supposed in Possession. *R. Hard. 460, 462.* (D. 77.)

If the Information charges Intrusion, and that he cut Trees, &c. the Judgment shall be also for Damages. *Q. Sav. 49.*

After Judgment, Execution shall be sometimes by Injunction. *Sav. 35. Hard. 460.*

Or, by *Amoveas Manum*. *Sav. 35. Hard. 462.*

And thereupon, every Party to the Information, or claiming under him, shall be removed from the Possession. *Hard. 460, 462.*

But a Stranger to the Information shall not be debarred of his Entry; for on an Information, no Judgment of Seisin is given, nor does an *Habere facias seisinam* go. *R. Hard. 460, 462.*

The King cannot be sued by Writ, for he cannot command himself. *4 Co. 55. a. Vide Action, (C. 1.)* (D. 78.) Remedy against the King. By Petition.

And therefore, where the King is seised by Matter of Record, or by Matter of Fact found by Office upon Record, he who has Right shall be, by the Common Law, put to his Petition of Right, in the Nature of a Real Action, to be restored to his Inheritance, or Freehold. *R. 4 Co. 55. a. R. per all the J. 4 H. 7. 7. b.*

So in all Cases, where the King seises the Lands or Goods of a Subject, without due Order of Law. *Stamf. Prær. 72. b.*

So, if the King enters into the Land of another, without Title or Office found. *Stamf. Prær. 74. a. b.*

Or does not pay an Annuity granted by him, or issuing out of Land in his Hands. *Ld. Somers's Arg. 81.*

Or does not pay a Debt, Wages, &c. *Ld. Somers's Arg. 85.*

And in all Cases, where a Traverse, or *Monstrans de droit*, does not lie, Suit ought to be to the King by Petition; As, if the King be intitled by double Matter of Record. *Stamf. Prær. 74. a. R. 3 Leo. 15.* Both Records being removed into the same Court. *Lane 58.*

If the King be intitled by a Record not traversable; as, by a Recovery in the King's Court, by Assent, without Title. *Stamf. Prær. 74. a.*

By an erroneous Judgment; for Error shall not be allowed, without a Petition. *Ibid.*

If a Stranger brings a *Præcipe in Capite*, against the Tenant of *B.* and recovers by Default, tho' *B.* is not thereby out of Possession of his Seignior, yet if the Recoveror dies, his Heir within Age, and the King seises the Ward, *B.* ought to sue for the Ward by Petition. *Ibid.*

So, in all Cases, where a Man has a Right, and in the Case of a Common Person, his Entry would be tolled, he ought to sue to the King by Petition; as, if *A.* disseises *B.* and dies seised without Claim made, and then it is found by Office, that *A.* held of the King *in Capite*; *B.* has not any Remedy but by Petition. *Stamf. Praer. 74. b.*

So, in all Cases, where the Entry would be tolled, if the Land was in the Hand of a Common Person. *Ibid.*

Or, where the Party controverts the King's Title. *Per Holt, Skin. 608.*

But where the King seises Lands, or enters without Title, or Matter of Record, if he who has Right be permitted to enter, his Entry is not unlawful, nor shall it be an Intrusion upon the King. *Ibid.*

So, if the King in such Case grants to another, he may enter upon the Patentee without Petition. *Ibid.*

So, tho' an Office finds a Title in the King, and a Grant, if it appears by the same Office that the Fact is mistaken. *R. Dy. 101. a.*

So, where an Estate is forfeited by Attainder, &c. none can sue by Petition before Office found; for till Office, the Estate is not vested in the King. *Jon. 78.*

If *A.* be attainted in *B. R.* and it be found by Inquisition in the *Exchequer*, that he was seised of the Manor of *D.* this will not be double Matter of Record, the Attainder not being in this Court, to intitle the King, that a Suit by the Owner ought to be by Petition. *R. Lane 58.*

(D. 79.)
To whom the
Petition shall
be.

Suit shall be to the King by Petition, for Goods as well as for Lands. *Stamf. Praer. 72. b. 75. b.*

So it shall be for Land, where the King is seised *en auter Droit*. *Stamf. Praer. 75. b.*

But Suit by Petition shall not be to any other but the King. *Ibid.*

Not to the Queen; for she has no such Prerogative. *Ibid.*

Nor to the Prince. *Ibid.*

(D. 80.)
How the Pro-
ceeding upon
it shall be.

A Suit by Petition may be to the King in Parliament, or in *Chancery*, or other Court.

If it be in Parliament, it may be established by Act of Parliament, or pursued as in other Cases. *Stamf. Praer. 72. b.*

Upon Petition out of Parliament, or there (if it be not pursued as a Statute) it shall be indorsed by the King, *Soit Droit fait*, and then delivered to the Chancellor. *Stamf. Praer. 73. a. Mo. 639.*

Or a Petition may have a special Conclusion, that the King command his Justices of *B. R.* or *C. B.* And if it be indorsed accordingly, it shall be pursued there. *Stamf. Praer. 73. a.*

If a Petition be delivered to the Chancellor, there ought to be an Inquisition which finds the Right of the Party, before the Petition be depending, or there be any Proceeding upon it. *Stamf. Praer. 72. b.* Except where the Attorney-General confesses the Suggestion. *Skin. 608. Ld. Somers's Arg. 41.*

If the Inquest finds for the King, there ought to be another Inquisition, till a Title be found for the Party. *Stamf. Praer. 73. a.*

If a Petition be indorsed to *B. R.* or *C. B.* it may be proceeded upon without an Inquisition; for the Indorsement warrants it. *Stamf. Praer. 73. b.*

So, where no Office is found to intitle the King, the Party may pursue a Petition, without an Inquisition for him. *R. Mo. 639.*

After a Commission, whereon a Title is found for the Party, before he can interplead with the King, there ought to be a Writ to inquire of the King's Title. *Stamf. Praer. 73. b.*

And this, in all Cases, where a Petition was in Parliament, or elsewhere, where Land was in the King's Hand, or granted to another; for after Issue found, upon Petition, for the Party, the King shall be concluded for ever. *Ibid.*

If the Land be granted to another, there shall be a *Scire facias* also against the Patentee. *Ibid.*

So where a Petition disaffirms the King's Possession, there ought to be four Writs of Search to the Treasurer and Chamberlains of the *Exchequer*. *Mo.* 639.

But Writs of Search are not necessary, where the Petition affirms the King's Possession: As, upon a Petition of Right of Dower. *R. Mo.* 639.

By the Common Law, a Man might sue to the King by *Monstrance de Droit*, (D. 81.) if his Title had appeared by the same Record by which the King was intitled: *By Monstrance de Droit.* As, if the King was intitled by an Alienation in *Mortmain*, Purchase from his Villein, from an *Alien nee*, Escheat, and the same Office which found for the King, found also the Title or Interest of the Party. *R. 4 Co.* 55. *a.* *Per Holt Skin.* 609. *When it lies by the Common Law.*

So, if his Title appear by another Record of as high a Nature: As, if a Conveyance be to the King, upon Condition to be void, if a Fine be levied, or a Recognizance given, or other Matter performed, which must be upon Record; if he who made the Conveyance levied the Fine, gave the Recognizance, &c. he may have a *Monstrance de Droit* by the Common Law; for the Performance appears by a Record as high as the Conveyance. *4 Co.* 55. *b.* *R. 4 H.* 7. *7. b.*

So, tho' the Performance of the Condition be not upon Record, if it be afterwards found by Office. *4 Co.* 55. *b.*

So, if the Title of the Party be not found by the same or another Record, whereupon he sues to the King by Petition, and an Inquisition be granted upon the Petition, finding his Right; he afterwards may have a *Monstrance de Droit* by the Common Law. *4 Co.* 57. *b.*

But if the Title of the Party does not appear by the Record, which finds a Title in the King, nor by any other Record as high, he cannot have a *Monstrance de Droit* by the Common Law, but ought to sue to the King by Petition. *4 Co.* 55. *b.* *Ld. Somers's Arg.* 75.

Tho' it appears by the Return of the Sheriff, Mayor, &c. to a *Diem Clausit extremum*, or other Writ; for the Return, tho' filed upon Record, is not so high as an Office found *per Sacramenta proborum Hominum*. *4 Co.* 55, 6.

So, if the Title of the Party is found by a Ministerial Record, as an Inquest before an Escheator, &c. when the King's Title appears by a Judicial Record, as an Attainder, Judgment, &c. which is higher. *4 Co.* 56. *a.*

So now, by the *St.* 36 *Ed.* 3. 13. Lands being seised by Inquest of Office before the Escheator, any who will claim the Lands seised shall be heard to traverse the Office, or otherwise shall have a *Monstrance de Droit*. (D. 82.) *When, by Statute.*

And therefore, when an Office is found, which is traversable by that Statute, the Party may have a *Monstrance de Droit*. *4 Co.* 59. *a.*

Tho' he be not put out of Possession by the Office. *Ibid.*

Tho' the King be intitled by Matter in *Pais*, found by Record; as, by Purchase of his Villein, Alienation in *Mortmain*, &c. *Ibid.*

So, if the King be intitled by Office, or Matter of Record, which is traversable, but, being true, cannot be traversed, the Party may have a *Monstrance de Droit*. *Stamf. Prær.* 71.

As, if it be found, that the King's Tenant died seised, and the Land descended to his Heir; where *A.* recovered against him before his Death, but he died before Execution. *Stamf. Prær.* 71. *a.*

Or, the Tenant disseised me. *Stamf. Prær.* 71. *a.* *4 Co.* 54. *b.*

But where the King was intitled by double Matter of Record, the Party could not have a *Monstrance de Droit*, till it was given by the *St.* 2 & 3 *Ed.* 6. 8. *Stamf. Praer.* 71. *b.* Or, the Title of the Party be found by one of the Records, or he pleads to one, *Nul tiel Record*. *Stamf. Praer.* 72. *a.*

In all Cases, where the Party may have a Traverse, or *Monstrance de Droit*, he may enter, or have an Action, if the King grants over the Land. *4 Co.* 59. *b.*

A *Monstrance de Droit* lies only in *Chancery*, or the *Exchequer*, except in special Cases. *Per Holt Skin.* 609.

The *Monstrance de Droit* recites the Inquisition found for the King, and then shews the Right of the Party, and prays an *Amoveas Manum*. *Co. Ent.* 402.

If the Attorney-General confesses the Title of the Party, Judgment shall be, *quod Manus Domini Regis amoveantur*. *4 Co.* 57. *b.*

If he replies to the Title of the Party, and afterwards confesses it. *Co. Ent.* 404. *b.*

Or, if found for the Party by Verdict, or upon Demurrer. *4 Co.* 57. *b.* *Co. Ent.* 406. *b.*

So there shall be Judgment also for the *mesne* Issues and Profits. *Stamf. Praer.* 71. *a.*

If the Plaintiff in a *Monstrance de Droit* has no Title, he shall be nonsuited. *Sal.* 448.

And he cannot have Judgment, tho' the King has no Title, if he himself has no Right. *Ibid.*

If there be a *Monstrance de Droit*, upon an Inquisition in *Chancery*, and upon that the Attorney-General demurs there, it shall be delivered into *B. R.* by the Hands of the Chancellor, and there determined. *Sal.* 448.

But if the Right of the Plaintiff in a *Monstrance de Droit* appears, or may be collected by the Inquisition, or the Inquisition be falsified by it, Judgment shall be for the Plaintiff, and the Inquisition, as to him, shall be avoided. *R. Sal.* 448.

(D. 83.)
Traverse of
Office.
When it lies
by the Com-
mon Law.

By the Common Law, where the King was intitled by Office, tho' it was false, the Party could not have a Traverse to the Office. *4 Co.* 56. *a.* Nor could avoid it without Petition. *Stamf. Praer.* 60. *b.* *13 Ed.* 4. 8. *a.* *Ld. Somers's Arg.* 77.

Nor, where the King was intitled by any Matter of Record, Judicial or Ministerial, Conveyance of Record, or Matter of Fact found by Office of Record. *R. 4 Co.* 55. *a.*

Tho' the Office concerned only a Chattel Real. *4 Co.* 56. *a.* *Vide infra.*

But where the Office did not give a Seisin or Possession to the King, but only intitled him to an Action for Recovery of the Land; in such Action the Party might traverse the Office by the Common Law. *4 Co.* 56. *b.*

As, if an Office finds, that the King's Tenant has ceased for two Years, or done Waste, or made a Feoffment by Collusion, &c. whereby the King is intitled only to his Action of *Scire facias* against his Tenant, in which the Tenant may traverse the *Cesser*, Waste, Collusion, &c. *Ibid.*

So, by the Common Law, an Office, or Inquisition for Goods or Chattels Personal might be traversed. *Stamf. Praer.* 60. *a.* *13 Ed.* 4. 8. *a.* *Vide supra.*

As, if *A.* be attainted for Treason, or Felony, or outlawed in Debt, Trespass, &c. and an Inquisition finds, that he had such Goods at the Time of the Felony, or Outlawry; a Stranger, who has the Property, may traverse it. *R. 4 Ed.* 4. 24. *a.*

[If a Term for Years is found and sold on an Inquisition on an Outlawry, a Mortgagee not in Possession shall be allowed to plead to the Inquisition. *Semb. Rex v. Blunt, P.* 1722. *Bunb.* 104.]

[On Outlawry, Inquisition thereon returned, *levari* issued, and Money levied, he who has a Statute-merchant, and is in Possession of the Land, may, on Motion, have Time to plead to Outlawry and Inquisition; and, on giving Security, have the Money in the Sheriff's Hands repaid him. *Rex v. Tollet, H.* 1722. *Bunb.* 123.]

[If on Inquisition, a Man is found possessed of a Term in Right of his Wife, and after his Death it is sold on *venditioni exponas*, the Widow shall be permitted to plead to the Inquisition, though she has defended an Ejectment brought by the Purchaser, and filed a Bill in Chancery. *Watts v. Robinson.*]

So Offices for Information only are traversable; as, all Offices under the *Exchequer Seal*. *Sav. 130.*

But where by Office, or Statute without Office, a particular Estate is vested in the King, he, in the Reversion or Remainder dependant upon the Estate vested, may enter upon the King, * without Traverse, or *Avoveas Manum*. *R. Sal. 469.* * His Estate being determined.

So, if it be found by Inquisition, that *A.* outlawed in a personal Action, was seised of Lands, which *B.* claims, and the Escheator takes the Profits by this false Office; *B.* may disturb him, without a Traverse. *Stamf. Praer. 67.*

[When an Inquisition is traversed, Security is taken to the Value of two Years Profits of the Lands. *Rex v. Barlow, in Sc. T. 1718. Bunb. 25.*]

And now, by the *St. 34 Ed. 3. 14.* Where Lands are seised upon an Office of the Escheator, finding, that the King's Tenant aliened without Leave, or held by Knight's-Service, and died his Heir within Age, he shall be received to traverse in *Chancery*, that the Land was not seisable. (D. 84.) When, by Statute.

But this Statute extends only to Offices found, *Virtute Brevis aut Commissionis*, not *Virtute Officii*. *Stamf. Praer. 60. a. 4 Co. 57. a.*

And if the Traverse is found for the Party, he shall not have Judgment till a Writ of *Procedendo ad Judicium* be awarded. *Ibid.*

By the *St. 36 Ed. 3. 13.* If Land be seised by an Office before the Escheator, returned into *Chancery*, a Man, who challenges the Lands seised, shall be heard without Delay to traverse the Office, &c. and thereupon there shall be a final Discussion, without waiting for any other Commandment.

And the last Statute allows a Traverse to all Offices found before the Escheator. *Stamf. Praer. 61. a. 4 Co. 57. b.*

And to Offices found before Commissioners, as well as before the Escheator. *Stamf. Praer. 61.*

And by the *St. 8 H. 6. 16.* it is extended to All aggrieved by the Inquest, tho' not put out of Possession by the Escheator.

And therefore, in all Cases, where the King is intitled by Office, the Party grieved may traverse the Point, by which the King is entitled: As, if an Office finds a Tenure *in Capite*, the Tenant may traverse the Tenure. *Stamf. Praer. 62. a.*

So he, who has Title, if he shews his Title, may traverse, before his Title be found by Record. *Stamf. Praer. 63. b.*

So, by the *St. 2 & 3 Ed. 6. 8.* If any be unruly found Heir, Lunatick, Idiot, or Dead, the Party grieved may traverse the Office, or Inquisition.

Or, any be entitled to an Estate of Freehold in Lands, found by Office or Inquisition to belong to a Person attainted of Treason, Felony, or *Praemunire*; tho' the King be intitled by double Matter of Record.

But those Statutes do not allow a Traverse, except where the King is intitled by the Office: As, if *A.* be attainted for High Treason by Verdict, or Act of Parliament, &c. and it is found by Office, that at the Time of the Treason, he was seised of such Lands, which *B.* claims as his own; *B.* cannot traverse the Office, without saying, that there is no such Record of Attainder. *R. 4 Ed. 4. 21. 29. a. Stamf. Praer. 61. b.* But this was remedied by the *St. 2 & 3 Ed. 6. 8.*

So a Man shall not be allowed to traverse the Office, where he cannot be aided by an Office to the contrary: As, if an Office finds a Tenure from the King, and that the Tenant is dead, and *A.* is his Heir; *A.* shall not traverse the Office, that *he is not Heir*, if the Tenure be true; for if another Office should find him *not Heir*, it does not avail; for the better Office shall be taken for the King. *Stamf. Praer. 61. b.*

So, if the Tenant dies seised of Lands in divers Counties, and *A.* be found his Heir of full Age, by Office in one County, and within Age, by Office in another County; he cannot traverse, that he is not within Age. *Stamf. Praer. 62. a.*

So none, who has not Title, can traverse an Office which finds a Title in the King: As, if an Office finds a Tenure *in Capite*, and that the Heir is within Age; the Lord, who claims a Tenure in Socage, shall not traverse the Tenure *in Capite*: For he has no Title to the Wardship. *Stamf. Praer. 63. a.*

Nor a Feoffee, without making to himself a Title by Feoffment, Licence, Alienation, &c. *Ibid.*

And it is not sufficient to shew a Title by Estoppel, as a Fine, &c. for the King shall not be estopped. *Stamf. Praer. 64. a.*

So, it is not sufficient, if he does not traverse all Titles, which the King had at the Time of the Traverse. *Stamf. Praer. 64. b.*

So a Termor for Years cannot traverse an Office, which finds the Inheritance, or Freehold in the King. *Stamf. Praer. 62. b. Semb. cont. 4 Co. 58. a.*

But now, by the *St. 2 & 3 Ed. 6. 8.* A Lessee, Copyholder, or any who has a Rent, or other Profit *apprendre* out of Lands, &c. in an Inquisition, where the King is intitled; shall hold and enjoy his Term or Interest, as if no Inquisition had been found, or his Lease or Interest had been found by such Office.

And it is sufficient for the Lessee, &c. to shew his Interest, &c. without alledging Seisin in another under whom he claims; for the Title to the Inheritance is not traversable, where the Lessee, &c. only supplies the Defect of the Office or Inquisition.

[To an Inquisition on an Extent on an Outlawry, the Defendant, as Tertenant, may plead, that the Party outlawed is dead, without setting forth a special Title. *Rex v. Barnfield, H. 1721. Bunb. 102.*]

[A Writ of *Diem clausit extremum* shall not be set aside on Motion, for Defendant may plead to the Inquisition. *Rex v. Michener, M. 1722. Bunb. 118.*]

[The Traversor of an Inquisition of Lunacy found for the King, shall be considered as a Defendant, and therefore the Record shall be made up, and carried down to Trial by the Prosecutor. *Rex v. Roberts, P. 17 G. 2. Str. 1208.*]

Yet the Heir, &c. shall not traverse the Office, without an Office which finds him Heir. *R. 7 Co. 45. 2 Cro. 186.*

Vide Ante, (D. 82.)

(D. 85.)
Remedy for
the King.
What Privi-
leges the King
shall have in
Suits.

The King, by his Prerogative, may sue in what Court he pleases. *Sav. 9, 10. F. N. B. 7. B. 32 E.*

[When the Revenue is concerned in the Event of a Cause, it shall be removed from any other Court where Action brought, into the Office of Pleas in *Scac'* *Lamb. v. Gunman, T. 24 & 25 G. 2. Parker 143.*]

If the Defendant dies, the Action by the King does not abate. *2 Cro. 481.*

So the King may lay his Action in what County he pleases, in any Personal Action. *1 Vent. 17. 1 Sid. 412. Vide Dett, (G. 12.)*

So, for Lands in any County, he may lay his Action in the *Exchequer*, and try it in that Court. *Sav. 10.*

So he may have a Bill for Taking of Goods in *Middlesex*, and intruding into Lands in the County of *N.* for, upon *Not Guilty*, a *Venire facias* goes to each County. *R. 4 Leo. 26.*

[Information in *Scac'* for loading Woolen Yarn for Exportation, may be laid in any County: The Offence is transitory, and there are no negative Words in the Statute (*12 C. 2. c. 32.*) *Attorney-General v. Browne, T. 1727. Bunb. 236. Attorney General v. Hines, H. 31 G. 2. Parker 182.*]

[If on a Commission to inquire whether *A.* is an Alien, it is found against the King, he cannot have another new Commission into the same County, but he may have a *Melius inquirendum*: and if that also is found against the King, it is conclusive; if for him, *A.* may traverse. *Ex parte Duplessis, T. 1754. 2 Vezey 438.*]

So the King may amend his Declaration in the same Term. *Vau. 65.* But not in another Term. *R. 13 Ed. 4. 8. a.*

So in an Information of Intrusion, if the Defendant makes a special Title, he ought not to traverse the Intrusion, but the Matter, upon which by the Information he is supposed to be an Intruder. *Per Manwood Ch. Bar. Shute cont. Sav. 2. Vide Ante, (D. 74.)*

In an Information in the *Exchequer* (if the King appears intitled by Matter of Record, *Vau. 64.*) if the Defendant pleads in Bar, and traverses the Matter of the Information, the King need not maintain his Information, but may traverse the Matter alledged by the Plea. *2 Cro. 481. Sav. 64.*

So, in a Traverse of an Office which finds a Title to the King, the King may traverse the Title of the Party, or maintain the Office, at his Election. *Stamf. Praer. 65. a. Vau. 64.*

So, if the King has several Titles traversed, he may maintain All, or only One, at his Election. *Stamf. Praer. 65. a.*

So the King may waive his Replication in another Term, when the Defendant is ready to rejoin. *R. 2 Rol. 41.*

So in an Information the King may waive his Demurrer to the Defendant's Plea, and reply to Issue. *Cro. Car. 347. Vau. 65. Hard. 455. Pl. Com. 322. a.*

[If Defendant pleads, and Attorney General does not reply or demur in reasonable Time, the Court may give Judgment for Defendant as if Plea confessed: But Attorney General should first be attended. *Rex v. Musters, H. 18 G. 2. Parker 50.*]

And the Defendant cannot waive his Plea, and plead the General Issue, without the Consent of the Attorney General. *Cro. Car. 347. 2 Rol. 41.*

[If on a *Scire facias* out of the Petty Bag to repeal Letters Patent, one Defendant has pleaded to Issue, and as to the other Demurrer was joined, the King may bring on either the Trial or the Demurrer first, as he pleases. *Rex v. Hare and Man, H. 6 G. Str. 266.*]

So, after Issue joined, the King may waive the Issue, and demur. *Stamf. Praer. 65. b. In the same Term. Vau. 65. Hard. 455. Pl. Com. 322. a.*

Or take another Issue in the same Term, tho' not in another Term. *Stamf. Praer. 65. b. Vau. 65. 13 Ed. 4. 8. a.*

But if the King joins Issue upon a Traverse of his Title, he cannot afterwards waive it, to traverse the Title of the Defendant. *Semb. Vau. 64. 1 Mod. 276. R. 13 Ed. 4. 8. a.*

So, in the *Exchequer*, no *Nisi prius* shall be granted where the King is a Party, where the Attorney General does not consent. *Sav. 2.*

So the Trial shall be at *Nisi prius*, and not in *Bank*, if the King by Letter requires it. *Cro. Car. 349.*

Tho' it be upon an Indictment removed by *Certiorari*. *Cro. Car. 348.*

So the King shall take Advantage of an Estoppel, tho' no Party to the Record; for he is always present. *Vide Estoppel, (D.)*

So, if a Title appears upon Record for the King, the Court *ex Officio* shall adjudge it for him. *Cro. Car. 590.*

So, if the Attorney General confesses the Plea of the Party, and thereupon he be discharged, where the Plea is no Bar in Law, the King shall not be bound; for tho' a Confession by the Attorney General in a Matter of Fact binds the King, it is not so in a Matter of Law. *Semb. Hard. 170.*

But after a *Disfringas* and a Jury returned upon it, the Attorney General cannot at his Pleasure stay Trial. *Qu. 4 Leo. 32.*

Neither can he waive the Issue after Verdict. *Hard. 455.*
[Prisoner at the King's Suit brought up by *Habeas Corpus* cannot be committed to the *Fleet* without Consent. *Barnes 385, 388.*]

So the King shall not be prejudiced by his Neglect to pursue his Right. (D. 86.)
So, where the King is Patron of a Church, a Lapse does not incur for not presenting within six Months. *Vide Esglise, (H. 6, 9, 11, 12.)* No Time runs against the King.

So, if the King's Goods are wrecked, the Lord shall not have them for the King's not proving his Property within a Year and a Day; for he may do it at any Time. *2 Inst. 168.*

If the King's Debt be not recovered before another takes Execution, the King shall not be prejudiced: For *Nullum Tempus occurrit Regi*. *Hard. 25. Vide Dett, (G. 8.)*

By

By *M. Cb. 9 H. 3. 29.* *Nullus liber Homo capiatur, imprisonetur, disseisetur de libero Tenemento, Libertatibus, liberis Consuetudinibus suis, utlagetur, exuletur, aut aliquo Modo destruat, nec super eum ibimus, aut mittemus nisi per Judicium Parium suorum, vel per Legem Terræ.*

Nulli vendemus, nulli negabimus, aut differemus Justitiam, aut Rectum.

And therefore, the Lands, or Goods, of none shall be seized by the King, except by Course of Law. *2 Inst. 46.*

[By *Stat. 9 G. c. 3. 16.* The King shall not sue, &c. any Person, &c. for any Lands, &c. (except Liberties and Franchises) on any Title which has not first accrued within sixty Years before the Commencement of such Suit, unless he has been answered the Rents within that Time, or they have been in charge, or stood *insuper* of Record, and the Subject shall quietly enjoy against the King, and all claiming under him by Patent, &c.]

[This extends not to Estates in Reversion or Remainder, or limited Estates.]

[These Lands shall be held on the usual Tenures, &c.]

[Usual Fee-farm Rents confirmed.]

[Putting in charge, standing *insuper*, &c. good only when on Verdict, Demurrer or Hearing, the Lands, &c. have been given, adjudged or decreed to the King.]

(D. 87.)
The Revenue
of the King;
How dis-
posed.
The Personal
Revenue.

No Officer, nor All together, can dispose of the King's Treasure *ex Officio.* *2 Rol. (180.) l. 35. 11 Co. 91. b. Ld. Somers's Arg. 57.*

Tho' it be for the Honour or Profit of the King. *2 Rol. (180.) l. 35.*

So the Court or Barons of the *Exchequer* cannot dispose of the King's Treasure out of his *Exchequer* to a Grantee of the King, by any Judgment upon the Exhibiting of a Patent to them. *R. per Treby and Lord Chancellor Somers. 5 Mod. 46, 62. Cont. per Holt and other J. Skin. 611. Ld. Somers's Arg. 128.*

So no Treasure can be disposed of, but by the Great, or Privy Seal. *Ld. Somers's Arg. 56.*

Not by Warrant of the Treasurer and Under-treasurer! *11 Co. 91. Ld. Somers's Arg. 58.*

So every one, who receives Money issuing out of the *Exchequer* without due Warrant, is accountable for it. *Mad. 271. Vide Dett, (G. 1.)*

But by the Writ or Warrant of the King, or the Barons of the *Exchequer*, to a Sheriff, &c. such Payment may be directed out of the Money in his Hands, which upon producing such Warrant shall be allowed upon his Account. *Mad. 248.*

And upon such Warrant the settled Alms and Liveries were usually paid. *Mad. 248.*

And frequently Sums for the Service, or Debts of the King. *Mad. 250.*

So upon a Bill of such Expence made, &c. the Chancellor issues a Writ of *Allocate.* *Mad. 271.*

So the King issued sometimes by Way of Preft, or Imprest, out of the Receipt of his *Exchequer*, &c. Money for such a Service; for which the Receiver became accountable to the King. *Mad. 266.*

And such Imprest was upon a Writ or Mandate of the King under the Great, or Privy Seal, directed to the Chief Justicier and Barons, or to the Treasurer and Chamberlains, and founded upon a Bill, or Certificate of the *Exchequer*, or other Matter of Record. *Mad. 268. (Reg. 192, 193.)*

Or, by a *Liberate* directed to the Treasurer and Chamberlains, commanding them *liberare de Thesauro nostro* such a Sum. *Mad. 268. (Reg. 192, 193.)*

And such *Liberate* was *pro hac Vice*, or for a Payment *annuatim*, which is called a Dormant, or Current *Liberate.* *Ibid.*

(D. 88.)
The Lands
and Real Re-
venue.

The King may dispose of his Lands and other Real Revenue of Inheritance, by his Patent, to others when he pleases. *Pl. Com. 213. b.*

And not only Lands, which he has by Descent, or Purchase, but also which are settled upon him, his Heirs and Successors, by Parliament. *R. 5 Mod. 47, 55. Skin. 602, 605.*

So the Customs, Excise, &c. given to him and his Heirs. 5 Mod. 56. Skin. 62.

So the King may mortgage his Lands.

And the Mortgagee ought to demand the Money at the Day, at the Receipt of the Exchequer; otherwise the King may re-enter. R. Mo. 556, 7.

So the King may grant a Rent-charge, or annual Sum, to be paid out of his Possessions or Revenue. Per Holt, Skin. 607.

And if he grants an Annuity, or annual Payment of a Sum, it does not charge his Person, but his Possessions. Skin. 607.

And such Annuity or Rent-charge is assignable to another, in Part, or in the Whole. Ibid.

So the King may convey Lands, of which he is seised in Right of the Dutchy of Lancaster, by Feoffment, and there ought to be Livery by Attorney. R. 1 Lev. 29.

Not when united to the Crown. Pl. Com. 214. a.

But by the St. 1 Ann. 7. S. 5. All Grants, &c. by the Queen or her Successors, after 25th March 1702, of any Manors, Lands, &c. (Advowsons of Churches and Vicarages excepted) shall be void, except made for a Term of 31 Years or under, or for three Lives, or for a Term determinable on one, two, or three Lives, or in Reversion, making up the Term of 31 Years or 3 Lives, &c. to commence from the Date or Making, subject to Waste, and reserving the usual Rent or more; or, if no Rent before, reserving a Rent not less than a third Part of the clear yearly Value, payable to the Queen and her Successors during the whole Term.

Provided, Building Leases may be for fifty Years, or three Lives, &c.

And the Hereditary Excise, Revenue of the Post-Office, First-Fruits and Tenths, Fines for Writs of Covenant and Entry at Alienation-Office, Post-Fines, Wine-Licences, Sheriffs Profers and Compositions, and Seisures for uncustomed and prohibited Goods, shall not be alienable, but for the Life of the King, who grants them.

[Stat. 17 G. 3. c. 17. directs Enfield Chase to be divided and inclosed.]

[N. B. It is surmised this Act will lead the Way to the Improvement of other of the King's Lands, now yielding little Profit, and that it was promoted by the Earl of Clarendon, Chancellor of the Dutchy with that View.]

As the King takes by Matter of Record, so, generally, his Estate shall not be devested, without Office, or other Matter of Record. (D. 89.)

As, if Land be given to the King by Deed inrolled, upon a Condition; the Grantor cannot enter for the Condition broken, without Office. When Lands shall be devested out of the King-By Office.

But where the King's Estate depends upon the Estate of another, if the former be defeated, the Remainder to the King shall be devested, without Office; as, if Land be granted to A. for Life, with Power of Revocation, Remainder to the King; if the Uses are revoked, the King's Remainder is devested without more. R. 2 Rol. 215. l. 45.

So, if an Estate be demised to A. for Life, Remainder to the King, upon Condition, that if the Lessor pays to A. 10l. he shall re-enter; if he pays, he may re-enter, and devest the Remainder in the King, without Office. R. 2 Rol. 215. l. 35. Mo. 546.

If upon a Petition, Monstrance de Droit, or Traverse, the Plaintiff recovers, Judgment shall be given Quod Manus Domini Regis amoveantur; and thereupon a Writ of Ouster-les-Mains goes, which is to the Effect, that the Plaintiff shall have his Lands, seised by the King, out of the King's Hands. Stamf. Præ. (D. 90.) By Judgment. Ouster les Mains.

77. b.

Vide Ante, (D. 82.)

Prærogative Court.

Vide Courts, (N. 2.)

6 C

VOL. IV.

PRÆ-

P R Æ S C R I P T I O N.

(A) Who may make it.

A Prescription, regularly, ought to be, by a Man, in him and his Ancestors, or in him and those *quorum Statum ille habet*, or by a Corporation, in them and their Predecessors. *Co. L. 113. b. Vide Post, (H.)*

Yet, an Officer may prescribe in him and all those *quorum Statum habet*. *Kit. 106.*

So the Chancellor may prescribe, that he and all Chancellors, &c. have used, Time whereof, &c. tho' he be not a Corporation, and has the Office only at Will. *Ibid.*

So the Ch. J. of *B.* may prescribe, that he and all Ch. Justices of *B.* have used to grant such Offices. *Ibid.*

So a Serjeant at Law, that he and all Serjeants have used to be impleaded by Bill, and not by Original. *2 Rol. 264. l. 10.*

An Attorney, that he and all Attornies of the same Court have Privilege. *2 Rol. 264. l. 15.*

An Under-Sheriff, that he and all Under-Sheriffs have used to take such Fees. *2 Rol. 264. l. 27.*

(B) Who not.

BUT where an Officer is only at Will, it is more proper to alledge a Custom, than to make a Prescription: As, the Ch. Justice of *B.* may alledge a Custom, that every Ch. Justice of *B.* hath used to make a Grant of such an Office. *2 Rol. 264. l. 20.*

So a Sheriff cannot prescribe, that he and all Sheriffs have used, &c. for he is but an annual Officer, and removeable at Will. *2 Rol. 264. l. 23.*

[None can prescribe (for Right of Common) but such whose Interests are permanent; therefore Tenant at Will or for Life cannot prescribe, nor the Occupier of a House; but they may in the Usage and Custom of the Vill. *Englsh v. Burnell, P. 5 G. 3. 2 Wils. 258.*]

(C) What Things may be claimed by Prescription.

Vide Franchises, (A. 1.)

ALL Franchises or Privileges, which a Man may have without a Title appearing upon Record, he may claim by Prescription: As, Waifs, Estrays, Wreck, Treasure-trove, &c. *Co. L. 114. b. 2 Rol. 270. l. 45. 5 Co. 109. Vide Waife.*

So, Royal Fishes; as Whales, Sturgeons, &c. *Co. L. 114. b.*

So, a Park, Warren, &c. *Ibid.*

So, Fairs, Markets, Frank-foldage, Toll, &c. *Ibid.*

A Corporation may be by Prescription. *Ibid.*

So a Man may claim, by Prescription, Liberty to hold Courts, a Court-Leet, Hundred, &c. *Co. L. 114.*

The Custody of a Gaol, &c. *Co. L. 114. b.*

So a Man may claim, by Prescription, to be Tenant in Common with another. *Lit. S. 310. 2 Rol. 264. l. 32.*

(D) What not.

Vide Franchises, (A. 2.)

BUT Franchises or Liberties, which cannot be seised as forfeited, before the Cause of Forfeiture appears upon Record, cannot be claimed by Prescription: As, *Bona et Catalla Proditorum, Felon', Felon' de se, Fugitivor', Utlagat',* aut

out in Exigend' Positor'. Co. L. 114. a. 2 Rol. 270. l. 20. Vide Waife, (B.—C.—D.)

Deodand, Sanctuary, &c. *Co. L. 114. a. Vide Waife, (E. 1, 2.)—Abjuration, (D.)*

Privilege to make a Corporation, Coroner, Conservator of the Peace, &c. *Co. L. 114. Vide Franchises, (F. 5.)*

To have a Conuſance of Pleas, &c. *Co. L. 114. a. Vide Courts, (P. 3.)*

So a Man cannot make Title to Land, by Preſcription. *Co. L. 114. b. 2 Rol. 264. l. 35.*

Nor can he claim to be Joint-tenant with another: For the Survivor takes. *Co. L. 195. b.*

Yet, a Man may claim a County Palatine by Preſcription, and, in reſpect thereof, to have *Bona et Catalla Felon'*, &c. *Co. L. 114. b. Vide Franchises, (D. 1.)*

(E) What ſhall be a good Preſcription.

(E. 1.) Muſt be Time out of Mind.

TO every Preſcription there are two inſeparable Incidents; Time and Uſage. *Vide Copybold, (S. 2.)*
Co. L. 113. b.

Preſcription, and Time whereof no Memory runs to the Contrary, are all one in Law. *Lit. S. 170.*

And this is underſtood, not only of the Memory of any one living, but alſo of Proof by any Record or Writing, or otherwiſe, to the contrary; for that ſhall be ſaid within Memory. *Co. L. 115. a.*

[Thus a Leaſe of Ground for fifty-fix Years, to be a Paſſage, ſhews it is not by Preſcription; and ſuffering it to be uſed for three or four Years after the Expiration, will not amount to a Gift to the Publick. *Rex v. Hudſon, T. 5 G. 2. Str. 909.*]

And therefore, where there is any Proof of the Commencement, or Original, of any Thing, it cannot be claimed by Preſcription: As, if a Vicarage be endowed *de minutis Decimis* 1310, and the Parſon appropriate be ſued by the Vicar for them; the Parſon cannot preſcribe againſt ſuch Demand; for his Preſcription muſt begin after the Endowment, which is within Time of Memory. *R. 2 Rol. 269. l. 50.*

So, tho' a Preſcription be alledged for Things Spiritual, or Eccleſiaſtical, it ought to be Time whereof, &c. tho' by the Canon Law it is reſtrained to forty Years. *2 Inſt. 653.*

Yet, where the Commencement and Original was before the Time of King R. 1. it may be claimed by Preſcription; for all Time before R. 1. is called Time out of Memory, upon an equitable Conſtruction of the *St. W. 2.* which limits it for a Writ of Right. *2 Rol. 269. l. 10 ad 45.*

And therefore, in an Annuity claimed of a Prior by Preſcription, if it be pleaded, that the Priory was founded within Memory, he ought to ſhew the Foundation ſince the Reign of R. 1. began. *2 Rol. 268. l. 25. 269. l. 50.*

So a Charter, &c. before the Time of R. 1. may be uſed as Evidence of a Preſcription for a Thing granted by the Charter. *2 Rol. 268. l. 5.*

(E. 2.) Muſt have a long, and quiet Uſage.

So every Preſcription ought to have long, continual, and peaceable Uſage, or Enjoyment. *Co. L. 113. b.*

And therefore, if repeated Uſage cannot be proved, the Preſcription fails.

So, if an Uſage within Time of Memory cannot be proved, the Preſcription fails: As, if a Town was incorporated before the Time of R. 1. and their Franchiſes were never afterwards uſed, they are loſt. *2 Rol. 268. l. 52.*

Yet, a Tortious Interruption of the Uſage, for ten or twenty Years, does not deſtroy a Preſcription: As, if a Preſcription be alledged of a *Modus* for Tithes

of Lambs, and it be found that such *Modus* was paid *Time whereof*, &c. till twenty Years last, and for that Time Tithes in *Specie*; yet, the Verdict is for the Prescription. *Co. L. 114. b. 2 Inst. 653.*

So, if the Plaintiff in a Writ of *Mesne* prescribes for Acquittal, and it be found, that at all Times there was Acquittal, till a Purchase by the Grandfather of the Plaintiff, and since, no Acquittal; the Verdict is for the Plaintiff. *Co. L. 114. b. 2 Rol. 271. l. 40.*

If a Man prescribes for Common, and the Usage was discontinued for many Years by a Lease of the Terre-Tenant. *2 Inst. 654.*

If Tenants of *Antient Demesne*, by Coercion, have paid Toll, &c. for many Years. *2 Inst. 654.*

[If an Impropriator makes a Lease of a Farm, and all Tithes thereto belonging, or therewith usually letten, and afterwards makes a Lease of the Rectory, and the Lessees of the Rectory have usually received the Tithes of the Farm, and the Lessees of the Farm never have; the Tithe shall be paid to the Lessee of the Rectory. But as to the Impropriator himself, *2 Quaintrell v. Wright, M. 1729. Bunb. 274.*]

(E. 3.) Must be certain.

Vide Copyhold.
(S. 19.)

So a Prescription ought to be certain: And therefore, a Custom or Prescription for Copyholders paying to the Lord, for a Fine upon a Death, *two Years Rent or less*, is ill. *R. 2 Rol. 264. l. 54.*

So, a Prescription to pay for Tithes *1d. or thereabouts*, for every Acre of Arable. *R. 2 Rol. 265. l. 5.*

But a Prescription, that *Magna Pars Rivuli* runs, &c. is good; for it is not necessary to shew, how much. *R. 4 Co. 88. b.*

[And a Prescription to take three Bushels of Barley out of every Ship's Cargo of Barley brought upon the Key for Exportation, is good. *Sargent v. Reed, P. 18 G. 2. Str. 1228. Wilf. 91.*]

That he ought to have, as appurtenant to his House, so much Estovers as a Man can dig in one Day, without saying, *to be burnt in his House*; for it is ascertained by being confined to so much as a Man can dig in one Day. *R. 1 Lev. 231.*

(E. 4.) Must be reasonable.

Vide Copyh. Id.
(S. 3, &c.)

So every Prescription ought to be reasonable: And therefore, a Man cannot prescribe for an Heriot upon the Death of every Stranger within his Manor.

Nor, for Warren in the Lands of a Stranger, which are not within his Fee, or Seignior. *2 Rol. 265. l. 52.*

Nor, for setting out his Tithes without the View of the Parson. *R. Hob. 107.*

So a Man cannot prescribe, that he and his Ancestors, seised of the Manor of C. have been exempted from the Government of the Mayor of London (where it lies) and his Officers; for that would be to be without Government. *R. 2 Rol. 265. l. 20.*

Nor, that he has the Assise of Bread and Ale, and the Search and Correction of Weights and Measures; without having a Court for it: for that is proper to the Leet. *R. 2 Rol. 265. l. 25.*

Nor, that no Forester, Sheriff, &c. intermeddle in his Manor; if he has not a Court there. *Jon. 271.*

So a Sheriff cannot prescribe for the taking of Gifts for doing his Office. *2 Rol. 266. l. 10, 50.*

So a Lord of a Leet, who has no Land besides his Leet, cannot prescribe to have the Wafts of the Town where his Leet is, against the Lord of the same Town. *2 Rol. 266. l. 52.*

But a Prescription may be reasonable, tho' it be unusual, or inconvenient: As, a Man may prescribe for a Way over a Church-yard, or thro' the Church. *2 Rol. 265. l. 40.*

For

For *Estovers* for repairing, or building new Houses. *Per 3 J. 2 Cro. 25.*

So a Corporation may prescribe for 3 *d. per* Pound of all Merchandize in such a Port, in respect that it is Owner of the Port, and maintains the Key, and a Crane, and Perches for directing Ships in the Chancel. *R. 2 Rol. 265. l. 30. Vide Copybold, (S. 18.)*

A Lord of a Manor may prescribe for Foldage, and that none erect Hurdles there in his own Land, without Licence. *R. 1 Leo. 11.*

(F) ~~What~~ shall not be good.

(F. 1.) Prescription against the King.

BUT a Prescription is not good, which runs against the King's Right, for *nullum Tempus occurrit Regi.* *2 Rol. 264. l. 40. Vide Copybold, (S. 12.)*

As, if the King was Patron, of Right, of a Chapel, no other can have it by Prescription. *2 Rol. 364. l. 42.*

[Yet if a Man claims Tithe-hay, under an expresse Grant of the King, and has never received any for many (as 120) Years, he shall not recover it. *Stone v. Redcut, H. 1728. Bunb. 262.*]

So a Man cannot prescribe to have, or be discharged of, the *Great Custom*, which is an antient Revenue of the Crown. *R. 2 Rol. 264. l. 45.*

So a Prescription for Toll, Wreck, &c. does not extend to the King's Goods. *Dav. 33. b.*

(F. 2.) To do a Wrong, or a Nufance.

So a Man cannot prescribe to do a Wrong, or a Nufance: As, to erect a Dove-cote. *R. 2 Rol. 265. l. 10. 2 Cro. 491.*

To put Logs *passim*, or Wood for a Continuance, in the Highway. *R. 2 Rol. 265. l. 15. R. 2 Cro. 446.*

To make Affart, or Waft. *Semb. Jon. 271.*

So a Corporation cannot prescribe to arrest upon Suspicion of Felony, and imprison for three Days, and then send to the Common Gaol. *2 Rol. 265. l. 50.*

(F. 3.) Contrary to a Statute.

So a Man cannot prescribe against a Statute; for that is the highest Record. *Vide Copybold, (S. 5.) Co. L. 115. a.*

But he may prescribe against a Statute, where his Prescription is preserved by another Statute. *Co. L. 115. a.*

And therefore, a Custom in *London*, That an Apprentice to one Trade within the City, may use any other Trade there, shall be good, notwithstanding the *St. 5 El. 4. Semb. Cro. Car. 347, 516.*

So, where a Statute is in the Affirmative only, a Man may prescribe for the same Matter: As, the Custom to devise remains, notwithstanding the Statutes 32 and 34 *H. 8.* which give Power to devise. *Co. L. 115. a.*

So, if a Statute in the Negative be only declaratory of the Common Law, a Man may prescribe against the Statute as well as against the Common Law: As, where the *St. M. Ch. 35.* says, That the Leet shall be holden only *bis in Anno*, at *Michaelmas* and *Easter*, which was the Common Law, the Lord may prescribe to hold it at other Times and oftner. *Co. L. 115. a. Vide Leet, (C.)*

Where the *St. 34 Ed. 1. de Forestis* enacts, that none shall cut down his Trees in a Forest, without the View of the Forester, which was the Common Law, a Man may prescribe to cut down, without his View. *Co. L. 115. a. R. cont. Jon. 270, 291. Vide Chase, (N. 3.)*

(F. 4.) Contrary to another Prescription, &c.

Vide Copybold,
(S. 17.)

So a Man cannot prescribe against another Prescription: For the One is as ancient as the other: As, if a Man prescribe for a Way, Light, or other Easement, another cannot prescribe for Liberty to stop it when he pleases. *R. 9 Co. 58. b. 2 Mod. 105.*

So a Man cannot claim, by Prescription, a Liberty given to him by the Common Law: As, for Privilege to abate a Nuisance.

To distrain for a Rent-service.

To pay Tithes without Fraud. *R. Hob. 107.*

So a Man cannot controvert the Commencement of a Prescription: As, if a Man prescribes for Rent, and to distrain for it, it cannot be alledged that it was always paid by Coercion. *Co. L. 114. a.*

But a Man may prescribe, that a Lord, for him and his Tenants, hath paid so much; and, in respect thereof, he and his Tenants were discharged of Tithes; and that he is Tenant of a Tenement, which Time whereof, &c. was Parcel of the Manor: Tho' the one Prescription must be prior to the other. *R. Tel. 2.*

So he may prescribe for holding a Court, and that the Court, Time whereof, &c. issued Process. *R. 1 Sal. 203.*

So he may prescribe for a Thing, which qualifies another Prescription: As, if A. prescribes for Common, B. may prescribe to inclose, when he has Lands lying there together. *Semb. 2 Mod. 104.*

(G) How a Prescription shall be destroyed.

Vide Ante,
(E. 1, &c.)—
Dismes, (E.
13, 20.)
When extin-
guished by
Unity of Pos-
session, Vide
Suspension,
(G.)

IF a Man prescribe to a Thing, which is totally destroyed, the Prescription is gone: As, if the Repair of a Castle be claimed by Prescription, and the Castle be demolished, the Prescription is destroyed. *4 Co. 88.*

So, if a Man has Franchises by Prescription, and the King grants the same Liberties to him by Charter; he cannot afterwards claim them by Prescription.

So, if a *Modus* be not entirely settled, Payment in Kind destroys it. *Sav. 13. Vide Dismes,* (E. 20.)

But a circumstantial Variation in a Thing, to which a Prescription is annexed, does not destroy the Prescription: As, if a Man prescribe *in Modo decimandi* for the Tithes of a Park; if it be disparked, the Prescription continues; for it is annexed to the Lands. *R. Hob. 39. Vide Dismes,* (E. 20.)

Or, for Tithes of a Mill, and two new Mill-stones are added. *Dub. Sho. 281. R. 4 Mod. 45.*

If a Corporation prescribes, and afterwards has a new Name, &c. the Prescription continues. *4 Co. 87. b.*

If a Man prescribes for a Water-course to a Fulling-mill, and he converts it to a Grist-mill. *R. 4 Co. 87.*

So, if he claims *Eftovers* to a House, which is pulled down; if it be afterwards rebuilt, the Prescription revives. *Hob. 39. 4 Co. 87. b.*

(H) How pleaded.

EVERY one, who pleads a Prescription, ought to alledge it in him, who has the Inheritance: As, to say that he is seised in Fee, and he and his Ancestors, or he and all those *quorum Statum ipse habet*, &c. *Co. L. 113. b. Vide Ante,* (A.)

Or, that a Corporation and their Predecessors. *Co. L. 113. b.*

[Therefore if Tenant for Years pleads Prescription in his own Name, it is bad; it ought to be in the Lord's who is Tenant in Fee. *Smith v. Morris, T. 5 & 6 G. 2. Fort. 340.*]

And

And therefore, where a Copyholder prescribes for Common, &c. *in alieno Solo*, he ought to prescribe, that the Lord of the Manor who has the Fee, Time whereof, &c. had Common there for him and his Tenants. *R. 4 Co. 31. b. Vide Copyhold, (P. 4.)*

And where Common is claimed in the Soil of the Lord, so that he cannot prescribe in him, he ought to alledge it by way of Custom; for he cannot prescribe in himself, in respect of the Baseness of his Estate. *R. 4 Co. 31.*

So a Man cannot alledge a Prescription for Common, or other Profit, *in alieno Solo*, in the Inhabitants of a Town, or of the antient Houses of a Town *Ratione Residentiæ*; for the Inhabitants, perhaps, have not the Inheritance. *R. 6 Co. 60. 2 Cro. 152. 2 Leo. 44. Godb. 97. R. 2 Cro. 446.*

So he cannot prescribe, That every *Pater-familias* of an antient House had Common, &c. for, perhaps, he was but Tenant for Years, at Will, by Statute Staple, &c. *R. 6 Co. 61. a.*

So it is not good, That every Freeman of a Corporation had Common; but he ought to prescribe in the Corporation. *R. 2 Jon. 115.*

So he cannot prescribe, That *A.* Tenant for Life, and *B.* in Remainder, ought to have Common. *Dub. 1 Leo. 177. Cro. El. 154.*

That *A.* who has a Grant to be Parker for his Life, and his Predecessors have, Time whereof, &c. *Semb. Dy. 71.*

So he cannot say, All the Possessors of such Land ought to make Fences. *Semb. 2 Cro. 665.*

So, if a Jury finds, That all Occupiers have used to repair, it is not a good Finding of a Prescription: For, perhaps, the Occupiers were only particular Tenants, and their Acts do not bind the Inheritance. *R. 5 Co. 99. b.*

Or, a Declaration alledges a Custom, That all Occupiers of a Close ought to have a Way, &c. *R. Cro. Car. 419. Jon. 367.*

So, if it be alledged, That *A. & omnes Tenuram illam habentes*, have used, &c. it is not good. *Godb. 54.*

But Inhabitants, &c. may prescribe for an Easement, &c. *in alieno Solo*, as for a Way, &c. *6 Co. 60. 2 Cro. 152. Semb. * Cro. El. 180. † || Cro. Car. 419.* [** Cont. [† 441.] [|| R. acc.]*]

So Inhabitants may prescribe to have Sacraments administered, or for Burial in the Church-yard. *2 Rol. 264. l. 16.*

So, to be discharged of Toll. *R. Sho. 257.*

So, for the Privilege of Dancing in the Close of another. *R. 1 Lev. 176.*

So Inhabitants may prescribe for a Matter of Discharge in their own Soil: As, *in Modo decimandi*. *6 Co. 60. 2 Cro. 152. Semb. Hob. 86. R. Hob. 118. R. 3 Lev. 386.*

So it will be a good Prescription to say, *Quod Tenentes, et Occupatores* of such a Close ought to repair the Fences: For *Tenentes* imports the Tenants of the Fee. *R. 1 Sal. 335, 6. Semb. 2 Cro. 665.*

That the Burgeses in a Corporation, Inhabitants in Messuages there, ought to have Common: For the Common is not alledged due to Inhabitants, but to Burgeses, who inhabit there; and to say, That every Burgess shall have it, is as well as, that the Corporation shall have it, for them and every Burgeses. *R. 2 Lev. 253.*

That all Farmers; for that is *tantamount* to all Occupiers. *R. * 2 Lev. [* Cont.] 163.*

When a Man may prescribe by a *Que Estate*, *Vide Pleader*, (E. 23, 24.)

If a Man claims, by Prescription, a Thing incident, &c. to another, he ought to say, That the Thing, to which, &c. *est antiqua*: As, if he prescribes *in Modo decimandi* to a Park, he may say, *quod est antiquus Parcus*. *Hob. 44.*

So, if he alledges an Usage to put Swine into a Park, as incident to the Office of Parker. *Dy. 71. b.*

If he alledges a Custom in a Town, it is sufficient to say, *antiqua Villa*. *10 Co. 59. b.*

[A Corporation may prescribe for a *Port Duty*, without shewing they are Owners of the Soil, or that they repair. *Mayor of Yarmouth v. Eaton, T. 3 G. 3. 3 B. M. 1402.*]

If

P R Æ S C R I P T I O N.

If he alledges a Custom in London, &c. he ought to say, *quod est antiqua Civitas.* R. Cro. El. 169.

[A Custom of London must be pleaded, or the Court cannot judicially take Notice of it. *Hartop v. Hoare*, P. 16 G. 2. Str. 1187. 1 Wils. 8. 3 Atkyns 44.]

But, if a Thing is not directly mentioned, as that to which, &c. it need not be alledged: As, if he prescribes in *Modo decimandi* in so many Acres in such a Park; it is not necessary to say, *quod est antiquus Parcus.* R. Hob. 118. 44.

So, if there be Words *tantamount* it is sufficient: As, if he says, that the Defendant diverted a Water-Course *a solito et antiquo Cursu* to a Mill, without saying, *Quod est antiquum Molendinum.* 3 Lev. 133. 3 Mod. 50.

So, if he says, *Quod cum Molendinum fuit ab antiquo erectum.* R. 1 Lev. 273.

[* Semb. cont.
upon a De-
murser.]

That he stopped a Window *per quam Lumen inferri consuevit.* R. Sal. 459.*

Yet, where a Park, Office or other Thing is claimed by Prescription, it is not sufficient to say, *quod est antiquus Parcus*, &c. but he ought directly to prescribe to it. R. 10 Co. 59. b. Hob. 44.

If a Man makes Title to a Thing by Prescription, he ought to prescribe for it directly, and it is not sufficient to say, that he and all whose Estate, &c. have used, &c. As, if he prescribes for Picage, for Goods exposed in a Market. R. 2 Jon. 227.

So, regularly, he ought to prescribe in an Usage; for it is not sufficient to say, that every Tenant of a Manor *potuit & potuisset sursum reddere*, &c. Ray. 4. 3 Leo. 83.

But where a Custom is alledged within London, it is sufficient to say *uti possit*, &c. Semb. Cro. Car. 347. R. Ray. 4.

So, if a Custom be an Inducement only to an Action, it is sufficient if it be alledged, *quod solet*, without saying, *solet & debet.* As, in Covenant against an Infant for Departure from his Master, being an Apprentice, by the Custom of London. R. 1 Lev. 12.

So, after Verdict, it will be well, if a Thing be alledged by Way of Prescription, where it ought to be by Custom. 1 Lev. 177.

For more of Title *Præscription*, Vide *Chimin*, (D. 2.)—*Dignity*, (C. 1.)—*Dismes*, (E. 2, &c.)—*Franchises*, (F. 4.)—*London*, (H.)—*Pleader*, (C. 38.)—*Rent*, (C. 7.)—*Temps*, (G. 12.)—*Toll*, (G. 1.)

P R E A M B L E.

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PREBEND AND PREBENDARY.

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P R E L A T E.

Vide *Certificate*, (A. 1, &c.)—*Ecclesiastical Persons*, (C. 1, 2.)—*Esglise*, (H. 11.)—*Heresy*, (B. 2.)—*Ireland*, (E.)—*Justices*, (L. 3.)—*Pleader*, (3 I. 12.)—*Visitor*, (A. 5, 8.)

PREMISES OF A DEED.

Vide Falt, (E. 3, 4.)

PRESENTATION.

Vide Esglise, (H. 1, &c.)—Pleader, (3 I. 5.)—Popery, (B. 8.)

PRESENTMENT.

Vide Chimin, (C. 11, 12.)—Copyhold, (F. 10, 11.—M. 7.)—Indictment, (B.—C.)—Leet, (G. 1, 2.)—Sewers, (G.)—Visitor, (A. 11.)

Darrein Presentment.

Vide Quare Impedit, (C. 1, &c.)

PRESENT ESTATE.

Vide Chancery, (3 Y. 8.)—Devise, (N. 18.)

PRESIDENT OF THE COUNCIL.

Vide Roy, (E. 2.)

PRICES OF VICTUALS, &c.

Vide Justices of Peace, (B. 89, 95, 99.)—Leet, (L. 9, 14.)

PRIMER SEISIN.

Vide Prærogative, (D. 59.)

PRINCE AND PRINCESS.

Vide Justices, (K. 1, &c.)—Roy, (G.)

PRINCIPAL.

Principal and Accessory.

Vide Justices, (T. 1, &c.)

Principal and Bail.

Vide Bail, (Q. 2, &c.—R. 3, &c.)

P R I N C I P A L.

Principal and Incident.*Vide Prohibition, (G. 23.)***Principal and Interest.***Vide Chancery, (3 S. 1, &c.—3 Y. 9.—4 A. 1, &c.)*

P R I N T I N G.

Vide Chancery, (D. 13.)—Trade, (B.)

P R I O R.

Vide Ecclesiastical Persons, (B. 2.)

P R I O R I N C U M B R A N C E.

Vide Chancery, (4 A. 10.)—4 I. 6.)

P R I O R I T Y.

Vide Privilege, (C. 2.)

P R I S A G E.

Vide Prærogative, (D. 45.)

P R I S O N A N D P R I S O N E R.

Vide Escape.—Imprisonment.—Justices, (R.)—Justices of Peace, (B. 69.)—Officer, (G. 8.)—Rescous.—Uses, (N. 9.)

P R I V A T E W A Y.

Vide Chimin, (D. 1, &c.)

P R I V I L E G E.

(A) Privilege to the Person of a Man to be free from Arrest.**(A. 1.)** In Attendance upon the Courts.**PRIVILEGIUM** est Jus Singulare, seu Lex Privata, quæ uni Homini vel Loco conceditur. Bl. Nom. verb. Privilege.

If a Man has a Subpæna, &c. to attend the Courts of Justice in Westminster, and be arrested by Process during his Attendance upon the Court, he shall be discharged. R. in Chancery, 1 Ch. R. 217.

So, if he be in Palace-yard *sedente Curia*; and the Bailiff may be committed. 2 *Mod.* 182.

So he shall be protected *eundo & redeundo*. *Semb.* 4 *Ed.* 4. 21. a.

Tho' he goes forty Leagues out of his Way. *Bro. Priv.* 4.

[If Defendant returning from Court to justify Bail is arrested, he shall be discharged. *Barnes* 27.]

[Attorney waiting till Judge comes, to attend a Summons, and the Hour expires, if arrested, shall be discharged. *Barnes* 378.]

So, if the Defendant himself attends the Trial of his Cause, and be arrested in *Facie Curiae*, he shall be discharged. *R.* 1 *Brownl.* 15.

So the Plaintiff shall have Privilege, if he be arrested by the Defendant, *veniendo ad Curiam* to attend his Cause. *Bro. Privil.* 57.

So a *Cestuy que Use*, who attends a Suit by his Feoffee. *Bro. Privil.* 1.

Or a Servant or Farmer, who brings Money to his Master or Lessor (Plaintiff or Defendant) for the Suit. *Bro. Priv.* 1.

So this Privilege extends to a Party, or Witness, who attends in inferior Courts of Record: As, in the Courts in *London*. *Semb.* 1 *Brownl.* 15.

In a Session of the Peace. *Ray.* 100. 1 *Lev.* 159. *Bro. Priv.* 35. *Crom. J.* 162. (180. *Edit.* 1617.)

In the Leet, as a Juror. *Lat.* 198.

If a Justice of Peace, Clerk of the Peace, or other Officer, be arrested *veniendo* to Sessions. *Crom. J.* 162. (180. *b. Edit.* 1617.)

[A Person attending Commissioners of Bankrupt, or other Commissioners under the Great Seal, under their Summons, is not liable to Arrest. *Semb. Kerney's Case, M.* 1744. 1 *Atkyns* 54.]

So, if a Party attends, to take out an original Writ, Writ of Error, or Pardon of Outlawry, &c. *Bro. Priv.* 22.

So Privilege extends to the Horse, Money, or other Necessaries for his Journey, which the Party has with him. *Bro. Priv.* 6, 8, 27.

In an Action against a Sheriff for an Escape, he shall plead such a Discharge. 1 *Brownl.* 15.

Or, if the Discharge be by Order of *Chancery*, the Sheriff shall have an Injunction. *R.* 1 *Ch. R.* 218.

But if a Man be not arrested in *Facie Curiae*, he cannot be discharged. *R.* 1 *Brownl.* 15. *Semb.* 2 *Mod.* 182. for there the Party arrested found Common Bail.

Tho' he pleads the Custom of *London* for his Discharge. 1 *Brownl.* 15.

So a Man cannot have a Writ of Privilege for his Discharge. *Semb. Ray.* 100. 1 *Lev.* 159. but upon Oath he shall be discharged. *Crom. J.* 162. *b.* (180. *b. Edit.* 1617.)

So, a Man who attends the Court without Process, or Necessity, to do a voluntary Act there, shall not be privileged *eundo & redeundo*: As, if a Defendant goes to the Court to confess an Indictment. 2 *Ann. Sal.* 544.

So, if a Juror in a Leet be arrested by Process out of an inferior Court, *B. R.* will not grant an Attachment, as if it was in their Court; but an Information. *Lat.* 198.

So, if a Servant of the King be arrested, without Licence of the King, or the Lord Chamberlain, or Notice to him. 2 *Keb.* 3.

But an Execution shall not be discharged, but the Party committed, if he do not consent to the Discharge of him arrested. 2 *Ca. Ob.* 69. *

So, if he be taken in Execution, he shall not be dismissed; for then the Creditor would be without Remedy. *Crom. J.* 162. *b.* (180, 181. *Edit.* 1617.)

[Yet Defendant taken in Execution whilst attending Writ of Inquiry as Attorney, was discharged. *Barnes* 200.]

So a Servant of the King, being arrested, shall not be discharged by Letter of the Chamberlain, or rescued by his Servants; for it is the King's Privilege. 2 *Keb.* 3.

[This Privilege extends not to Capital Crimes, thus Defendant appearing upon his Recognizance, was arrested in Court, upon a new Warrant for treasonable Practices. *Rex v. Kelly, M.* 9 *G. Str.* 530.]

A Volunteer

[A Volunteer is not privileged from Arrests, under an Act privileging impressed Men. *Turner v. Turner*, H. 31 G. 2. 1 B. M. 466.]

(A. 2.) Within a Place of Privilege.

So, if a Man be arrested within a Place having Privilege, as, in *Westminster-Hall sedente Curia*. 3 Inst. 141.

Or, in the King's Palace at *Westminster*, or other Palace where the King resides. *Ibid*.

So, if a Summons, or Citation, be served there, the Person shall be imprisoned. 3 Inst. 140, 141.

But an Exemption from Arrest shall not be allowed within an Inn of Court. *R. Skin*. 685.

(A. 3.) How discharged.

If a Man be arrested, or sued, contrary to his Privilege, he shall have a *Superfedeas* out of *Chancery*. *Bro. Priv.* 12, 13. *Tb. Br.* 298, 299.

Or, if his Privilege be as an Officer of the *Exchequer*, he may have a *Superfedeas* out of the *Exchequer*. *Bro. Priv.* 8, 16, 25.

So, if he be arrested and in Custody, he may have a *Habeas Corpus*. *Bro. Priv.* 10, 11.

So, if he be privileged to be sued in another Court, he shall plead his Privilege. *Vide Abatement*, (D. 4, &c.)

So he shall have a Writ of Privilege, which contains a *Superfedeas*. *Dy.* 287. a.

And, if the inferior Court proceeds after the *Superfedeas*, or Writ of Privilege delivered, it will be null, and *coram non Judice*. *Bro. Priv.* 28.

As, an Officer of *B. R.* shall have a Writ of Privilege, for his Discharge, if in Custody by Process of *C. B.* unless it be in a Real Action. *Tb. Br.* 171.

[Attorney of *C. B.* returning from taxing Costs, arrested by Process of *B. R.* *C. B.* cannot discharge him, but will grant Rule against Officer. *Barnes* 200.]

(B) Privilege to be excused from an Office.

AN Attorney shall have Privilege, that he be not chosen to the Office of Churchwarden. 2 Rol. 272. l. 15. *Tb. Br.* 299.

That he be not Overseer, Constable, &c. *Tb. Br.* 300. *Off. Br.* 160, 162. *Vide Attorney*, (B. 16.)

[The Deputy to the foreign Opposer allowed Writ of Privilege to exempt him from serving Constable. *Harrison's Case in Sc. T.* 1718. *Bunb.* 24.]

[Allowed to a Clergyman against serving the Office of Collector and Expenditor to the Commissioners of Sewers. *Vicar of Dartford's Case*, H. 12 G. 2. *Str.* 1107. *Andr.* 353.]

[Allowed to the Deputy to the Usher of the Customs chosen Headborough; for he is obliged to attend the Court of Exchequer.]

[But refused to the chief Accountant of the Navy-office chosen Churchwarden; for he is not obliged to attend. *Bishop v. Lloyd*, M. 1728. *Bunb.* 255.]

[Writ of Privilege lies not for a Justice of Peace not to be Constable; he should apply to the Sessions, under *Stat.* 13 & 14 C. 2. c. 12. ff. 15. *De la Motte's Case*, P. 12 G. *Str.* 698.]

(C) Privilege in Suits.

(C. 1.) By being an Officer to a Court, &c.

SO, if a Man be an Attorney, or Officer to *B. R. C. B.*, &c. he has a Privilege to be sued in the same Court, and not elsewhere. *Vide Abatement*, (D. 6.)—*Attorney*, (B. 17, &c.)

So, if he be an Accountant, or Minister, of the *Exchequer*, or his Servant attending upon him in his Office. *Bro. Priv. 8. Vide Abatement, (D. 6.)—Courts, (D. 2.)*

If he be a Serjeant at Law. *Vide Ley, (D. 3.)*

But a Servant to an Officer of the *Exchequer*, in Husbandry, and not attendant upon the Office, or his Master, shall not have Privilege. *Bro. Priv. 8, 16.*

So, if Land lies in *Antient Demesne*, the *Cinque-Ports*, &c. *ubi Breve Domini Regis non currit*, the Suit shall be for it in the Court of *Antient Demesne*, &c. and not elsewhere. *Vide Abatement, (D. 1, 2, 3.)—Ancient Demesne, (F. 5.)—Franchises, (E. 1, &c.)*

[If an Attorney dies insolvent, having a Bill due to him from his Client, in which is included a Clerk of the Crown-office's Bill, he may have a Rule to be paid by the original Client, and not come in for his Share of the Insolvent's Estate. *Waldron's Case. H. 13 G. 2. Str. 1126. Rex v. Smollet, P. 2 G. 3. 3 B. M. 1313.*]

(C. 2.) By Priority of Suit.

So, if a Suit be commenced in *B. R. C. B.* or other Court of *Westminster*, and the Plaintiff afterwards sues for the same Cause in a base Court, the Defendant, arrested by Process out of such base Court, upon an *Habeas Corpus*, shall be discharged: As, if a Plaintiff sues in *C. B.*, &c. and afterwards enters his Plaint for the same Cause in a Court of *London*. *Bro. Priv. 19, 24.*

So, if he be afterwards arrested by Process out of *B. R.* *Bro. Priv. 22, 24.*

So a Defendant shall have Privilege, if he was arrested after the *Teste* of the Original in *C. B.* tho' before the Return, if the Writ be afterwards returned: For it has Relation to the *Teste*. *Bro. Priv. 4.*

Tho' the Plaintiff be *essoined*, or does not appear in *C. B.* *Bro. Priv. 5.*

Or, be afterwards nonsuited; if the Action was depending at the Time of the Arrest by Process out of the inferior Court. *Bro. Priv. 5, 9, 19.*

But a Defendant shall not have Privilege upon an Arrest out of a base Court, if the *Teste* of the Original in *C. B.*, &c. be later than the Arrest. *Bro. Priv. 39, 53.*

Or, if the Arrest was before the Return of the Writ, and the Writ never was returned. *Bro. Priv. 5.*

So, if after a Suit commenced in *C. B.* a Plaint be in *London*, to have a foreign Attachment, and the Defendant renders himself to Prison there within a Year and a Day to dissolve the Attachment, he shall not have Privilege; for the Render was *gratis*, and for his Benefit. *Bro. Priv. 6. Cont. ibm. 29.*

So a Defendant shall not have Privilege if he be outlawed in the Suit in *C. B.* before his Arrest. *Bro. Priv. 10.*

If the Action in *C. B.* was commenced by *Covin*. *Bro. Priv. 19, 31, 43.*

As to the Privileges of Peers of Parliament.

Vide Dignity, (F. 1, &c.)

As to the Privileges of Ecclesiastical Persons.

Vide Ecclesiastical Persons, (D.)

As to Privilege of Parliament.

Vide Parliament, (D. 17.—E. 15.)

Vide more concerning Privilege, in Alien, (C. 1, &c. 7, 8.—D. 2.)—Ambassador, (B.)—Antient Demesne, (F. 1, &c.)—Attorney, (B. 16, &c.)—Bankrupt, (D. 32, &c.)—Cemetery, (A. 3.)—Chancery, (D. 10.)—Chase, (N. 3, 4, &c.)
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P R I V I L E G E.

4, &c.—O. 1, &c.)—Convocation, (C.)—Enfant, (D. 1, &c.)—Eftates, (C. 3.—E. 3.)—Franchifes, (E. 1.)—London, (L. 1, &c.—M.)—Physicians, (B.)—Prærogative, (D. 32, 85.)—Roy, (F. 1.)—University, (B.—C.)

P R I V Y.

Vide Confirmation.—Fine, (I. 1.)—Pleader, (O. 1, &c.)

P R I V Y C O U N S E L L O R.

Vide Parliament, (L. 30.)—Roy, (E. 2, &c.)

P R I V Y S E A L.

Vide Patent, (C. 5.)

P R I V Y S I G N E T.

Vide Patent, (C. 6.)

P R O B A T E.

Vide Administration, (B. 6, 8, 9.)—Prohibition, (G. 16.)

P R O C E D E N D O.

Vide Certiorari, (D.—G.)—Prohibition, (K. 1, &c.)

P R O C E E D I N G S.

When Evidence.

Vide Evidence, (C. 1, &c.)

Proceedings, and Pleadings in particular Actions.

Vide Plea,—Pleader, (2 A. 1, &c. to the End of the Title.)

P R O C E S S.

(A. 1.) Process; Who may issue it.

PROCESS, in a large Acceptation, comprehends the whole Proceeding after the Original, and before Judgment. 8 Co. 157. b, Blackmore. *Vide Amendment,* (C. 1.)

But, generally, it imports the Writs, which issue out of any Court, to bring the Party to answer, or for doing Execution.

When the King grants an Authority of *Oyer* and *Terminer*, the Power to issue Process is incident: For there cannot be *Oyer*, if the Party does not appear *gratis*, or be brought by Process.

And therefore, where Justices of Peace have Power to outlaw another, they may issue a *Capias Utlagatum*. R. 2 Rol. 277. l. 35.

(A. 2.) In what Name.

All Process out of the King's Courts ought to be in the Name of the King.

By the St. 27 H. 8. 24. All Writs Original or Judicial, all Indictments for Treason, Felony, or Trespass, and all Process, shall be in the King's Name, in Counties Palatine, or other Liberties in *England*, or *Wales*.

(A. 3.) Under what Seal.

So all Process ought to be under the Great Seal.

By the St. 28 Ed. 1. 6. No Writ which concerns the Common Law shall go out under any of the Petit Seals.

(B) When Process shall be returnable.

THE Days for the Return of Process are General or Special. Co. L. 134^b.

By the St. 51 H. 3. *Dies Communes*; 32 H. 8. 21. & 16 Car. 6. In all Real Actions (except Writ of Entry for a Common Recovery, Right of Advowson, and Dower *unde nihil habet*) if the Writ come in, or be returnable in C. B. on any Common Return-day, Day shall be given till the ninth Return after inclusive.

In Writs of Entry for a Common Recovery, Right of Advowson and Dower, *unde nihil habet*, till the fifth Return inclusive.

And by the St. 32 H. 8. 21. In any Writ of Dower, till the sixth Return inclusive. Vide 2 Inst. 124.

And by the St. 16 Car. 6. Summons *ad Warrantizandum* against a Vouchee, upon Appearance of the Tenant in a Writ of Entry, or Writ of Right of Advowson (which before were made for nine Returns inclusive) shall be abridged to five Returns, as it was used in a Summons *ad Warrantizandum* in a Writ of Dower *unde nihil habet*.

By the Stat. of Marl. 52 H. 3. 12. conf. by the St. 16 Car. 6. In an Affise of *Darrein Presentment*, and *Quare Impedit*, *dentur Dies de Quindena in Quindenam, vel de tribus Septimanis in tres Septimanas*.

Or, by Consent of the Parties, a longer Day may be given, if such Consent appears upon Record. 2 Inst. 124.

By the Common Law, there ought to be fifteen Days between the *Teste* and Return in Summons and Attachments. Co. L. 134. b. 2 Inst. 567. Mod. Ca. 146.

[If there are not fifteen Days between *Teste* and Return of *Capias*, the Proceedings cannot be staid, but the Writ may be quashed; it is Error, not Irregularity. Barnes 76, 409, 410.]

[If Process is made returnable on a *Dies non Juridicus*, (as *Ascension-Day*) it shall be quashed. Rex v. Knight, T. 1732. Bunb. 318.]

[In a Suit by Bill in B. R. the *Essoin-day* is not a Return; and if a *Fieri Facias* is made so returnable, the Execution is void, and the Goods must be returned. Adams v. Sparry, M. 20 G. 2. 1 Wils. 155.]

[If a *Distingas* be made returnable *die lune prox. post quinden*. Trin. it is right; for *quinden*. Trin. is a Sunday. Rex v. Gumley, T. 2 G. 2. Str. 811. Ld. Raym. 1528.]

[Next after eight Days from, &c. is the same as next after the *Octave*, &c. Semb. Campbell v. Cumming, T. 1 G. 3. 2 B. M. 1187.]

By

By the *St. Art. super Chart.* 28 Ed. 1. 15. *En Summons et Attachments en Plea de Terre, de formes conteigne la Summons ou l'Attachment le Terme de 15 Jours a tout la meyns, solongue la Common Ley.*

So, in Re-summons and Re-attachments. 2 *Inst.* 567.

So, in a *Pone*; for it is in the Nature of a Summons. *Ibid.*

In a *Venire facias Juratores*; for it is a Summons to the Jurors. *Ibid.*

So, by the *St.* 16 Car. 6. In Dower *unde nihil habet*, the *Venire facias*, and all Procefs, after Issue joined, and before Judgment, need not have more than fifteen Days, any more than in Personal Actions.

So it may be in Procefs upon an Information, &c. which does not go to Outlawry. *R. Sal.* 699.

But if a Summons be returned *tarde*, &c. the *Alias* Summons shall have nine Returns between the *Teste* and Return. *Co. L.* 134. b. 2 *Inst.* 567. *R. Dy.* 252. a. *Hutt.* 43.

So Procefs to Outlawry in the Crown Office shall be *de Termino in Terminum*. *Sal.* 699.

So Procefs Judicial in *B. R.* (in *Middlesex* particularly) may be *de Die in Diem*. *Sal.* 602.

[*Capias adrespnd.* tested in *Trinity*, and returnable in *Hillary*, is void and a mere Nullity. *Parsons v. Lloyd.* *M.* 13 G. 3. 3 *Wils.* 341.]

[One Day between the *Teste* and Return of a special *Latitat*, is sufficient. *Loving v. Avery.* *M.* 5 G. 2. *Str.* 917.]

So, by the *St.* 16 Car. 6. Return from *Cro. Ascens' Domini* to *Cro. Trin.* shall be good, tho' there be not fifteen Days between the 4^o *Die post Cr'm Ascens'* before the *Essoign-day* of *Cro. Trin.*

So, by Consent, other than the Common Days of Return may be taken. *Co. L.* 134. b.

So, by Common Law, and by the *St. Art' super Chart'* 15. In an Affise before the Justices of *B. R. C. B.* or Justices in *Eyre*, the Justices may give a special Day in Term, or out of Term; and therefore, an Attachment in an Affise need not have fifteen Days before the Appearance. *Co. L.* 134. b.

[If there are fifteen Days between the *Teste* and Return, both inclusive, of a *Scire Facias*, it is sufficient. *Hicks v. Jones.* *T.* 13 G. *Str.* 765.]

And by the *St.* 32 H. 8. 21. & 16 Car. 6. Special Days, where usual, shall be allowed.

[In Suits by Bill *Fieri Facias* must be returnable at a Day certain, or shall be quashed. *Barnes* 213.]

[If *Ca. Sa.* against an Attorney is returnable at general Return, and not Day certain, it shall be quashed, and Defendant superseded. *Barnes* 413.]

[On the Traverse of an Inquisition sent out of Chancery to be tried in *B. R.* the *Venire* must be returnable on a general Return, and not on a Day certain. *Rex v. Roberts.* *T.* 17 G. 2. *Wils.* 77.]

So, in a Writ of Execution there need not be fifteen Days between the *Teste* and Return: As, in a *Scire facias* for executing a Fine, or Recovery in a Real Action. *Co. L.* 134. b.

Nor, in a *Scire facias* against Bail.

Nor, in a *Per quæ Servitia*, &c. *Co. L.* 134. b.

Nor, in any Judicial Writ. *Ibid.*

Nor, in Procefs against an Infant to be inspected. *Ibid.*

In a *Pone* by the Defendant. *Ibid.*

Nor, in Error. 2 *Inst.* 567.

Nor, in a *Venire facias* upon an Indictment for Treason, or Felony, taken in *B. R.* 2 *Inst.* 568.

[By *Stat.* 24 G. 2. c. 48. In real Actions, if Writ is returnable

<i>Craf. Anim.</i>	<i>Day shall be given</i>	<i>Quind. Martin.</i>
<i>Craf. Martin.</i>	— —	<i>Oct. Hilar.</i>
<i>Oct. Martin.</i>	— —	<i>Quind. Hilar.</i>
<i>Quin. Martin.</i>	— —	<i>Craf. Pur.</i>

Oct. Hilar.	Day shall be given	Oct. Pur.
Quind. Hilar.	— — —	Quind. Pasch.
Craf. Pur.	— — —	Tres Pasch.
Oct. Pur.	— — —	Mens. Pasch.
Quin. Pasch.	— — —	Quinque Pasch.
Tres Pasch.	— — —	Craf. Ascen.
Mens. Pasch.	— — —	Craf. Trin.
Quinque Pasch.	— — —	Oct. Trin.
Craf. Ascen.	— — —	Quin. Trin.
Craf. Trin.	— — —	Tres Trin.
Oct. Trin.	— — —	Craf. Anima.
Quin. Trin.	— — —	Craf. Martin.
Tres Trin.	— — —	Oct. Martin.

[There need be but fifteen Days between *Teste* and Return of *Venire*, and other Process on Writ of Dower *unde*, &c. after Issue joined, and before Judgment.]

[All Process having Day from the fourth of *craf. Ascend.* to *craf. Trin.* are good.]

[Summons to warrant against Vouchees on common Recoveries had, abridged to four Returns inclusive.]

[Courts may appoint special Returns as usual.]

[The Days of Affize in *darrein Presentment* and *quare Impedit*, and the Days to be given in attain, stand.]

As to the Form, or *Teste* of Process, *Vide Abatement*, (H. 1, &c. 14.)

(C) Process in Criminal Cases.

BY the Common Law, in an Appeal, or Indictment, for the Death of a Man, the Process was a *Capias*, and afterwards Exigent and Outlawry, *Vide Appeal*, (G. 5.)

But for another Felony there ought to be two *Capias*'s, before the Exigent. *Ibid.*

By the *St. 25 Ed. 3. 14.* On an Indictment of Felony before Justices of *Oyer* and *Terminer*, a *Capias* shall go to the Sheriff, and on a *Non est inventus* returned, another *Capias* to seise his Goods, also returnable at three Weeks, and if he be taken, or appear, before the Return of the second *Capias* he saves his Goods, otherwise the Exigent shall go. *Vide Appeal*, (G. 5.)—*Indictment*, (I.)

By the *St. 6 H. 6. 1.* The Writs of *Capias* before Exigent, against any indicted in *B. R.* shall be directed to the Sheriffs of the County where the Party dwells, as well as of the County where named in the Indictment, having six Weeks at least, or longer, if the Justices in their Discretion think fit, before the Return; otherwise the Exigent and Outlawry on it shall be void.

By the *St. 8 H. 6. 10.* On every Indictment or Appeal, for Treason, Felony, or Trespass, against any, dwelling in another County than where the Indictment or Appeal was taken, after the Return of the first *Capias*, another *Capias* shall go to the Sheriff of the County, where the Party is supposed dwelling, returnable three Months after Date, if the Counties be held monthly; if at every six Weeks, then four Months after; commanding the Sheriff, if the Party be not found, to make Proclamation at two Counties, to appear at the Return of the Writ, in the County or Franchise where indicted; and if then he appear not, the Exigent shall go, &c.

(D) Process in Real Actions.

(D. 1.) Summons.

IN all *Præcipe's quod reddat* (*viz.* all Real Actions properly and strictly for Demand of Land) the original Process is a Summons.

As, in a Writ of Right, *quia Dominus remisit Curiam, &c.* Right of Advowson, *Præcipe in Capite.* *Fl. N. B. 2. F. 5. J. 30. E.*

In a Writ of Right of Ward, *Cessavit, Escheat, Dower unde nihil habet, and Formedon.*

In all Writs of Entry.

In a *Quod ei deforceat.*

So, in many Writs of *Præcipe quod faciat*: As, in a Writ *de Rationabilibus Divisis*, Customs and Services, *Señta ad Molendinum.*

So, in *Nativo habendo, Quo Jure*, Writ of *Mesne, Quod permittat.*

So, in all Actions Ancestrel possessory; as, *Mortd'ancestor, Aiel, Besaiel, Co-finage, and Nuper obiit.*

So, in an Assise of *Darrein Presentment, Quare Impedit, Juris Utrum.*

In an Attaint; by the *St. 23 H. 8. 3.*

In a *Warrantia Chartæ, Curia Claudenda, and Partition.*

So, where a Stranger to the Writ is to be cited *pendente Lite*, Process shall be against him by Summons: As, upon Voucher, *Aide prier*, by Summons *ad warrantizandum, Summons ad auxiliandum.*

So, in Personal Actions for Debt or Contract, the original Process is Summons.

(D. 2.) Re-summons.

If a Summons be returned *tarde*, or not returned, there shall be an *Alias* Summons. *Off. Br. 358, 361.*

Or returned, That the Demandant hath not found Pledges. *Off. Br. 357, 361.*

Or, That none came to shew the Land to the Sheriff. *Off. Br. 358, 359.*

Or, That no Proclamation was made according to the *St. 31 El. 3. Off. Br. 357, 361.*

(D. 3.)
How execut-
ed.

The Sheriff in Person, or by his Bailiff, ought to summon the Tenant in Person, or upon the Land demanded. *Fl. 6. c. 6. §. 4, 5.*

In Personal Actions Summons shall be to the Person, if he be within the County, or at his House. *Fl. 6. c. 6. §. 4.*

So, where the Tenant has no Land, whereon he may be summoned. *Fl. 6. c. 6. §. 5.*

In Right of Advowson, *Quare Impedit, &c.* it may be at the Church.

And the Sheriff may enter the Land of another, to summon the Tenant. (1 *Brownl. 158.*)

If the Action be for Recovery of Land, it ought to be in *Terra petitâ.*

Tho' he be not actually Tenant of the Land. *Fl. 6. c. 6.*

Tho' he has only the Reversion.

So the Heir shall be summoned on the Land which descends.

The Sheriff ought to take two Summoners, *probos & legales Homines*, to testify the Summons. 1 *Brownl. 158.* 1 *Mod. 248.* In Real Actions. 2 *Sbo. 282.*

And, tho' now he does not make Summons, yet, it ought to be proved, if the Summons be denied; for the Sheriff returns the Names of the Summoners.

So the Summons ought to be in the Day-time, before Sun-setting. *R. Cro. El. 42.*

And fifteen Days at least before the Return of the Writ. *Co. L. 134. b.*

And by the *St. 31 El. 3.* After Summons in Real Action, Proclamation shall be made of it on Sunday, fourteen Days before the Return, at or near the most usual Door of the Church or Chapel of the Town or Parish where the Land lies, on which the Summons was made; otherwise no *Grand Cape* shall go, but an *Alias*, or *Pluries* Summons. *Vide Hutt. 43.*

The Summons shall be at the Church-door, tho' the Church be out of the County. *R. Cro. El. 472.*

And

And it is not sufficient to say, that he proclaimed all contained in the Writ; but he ought to say, that he proclaimed, that he made Summons on the Land. *R. Hob. 133.*

But if the Land be in several Parishes, a Summons in one is sufficient. *Hob. 133.*

So a Proclamation at the Church of one Parish is sufficient. *Hob. 133. Noy 22.*

So it is sufficient that the Names of the Summoners are returned, without saying, that the Summons was made. *Hob. 133.*

How he shall wage his Law of Non-summons, *Vide Abatement, (H. 53.)*

(D. 4.) *Grand Cape.*

In all *Præcipe's quod reddat*, if the Tenant does not appear, or is effoined at the Return of the Writ, if he cannot save his Default, he shall lose his Land; and therefore, a *Grand Cape* issues to take the Land into the King's Hand, and to summon the Party to answer for his Default. (*Fl. 6. c. 14. § 1, 3, 4.*)

The Sheriff ought to take the Land into the King's Hand fifteen Days before the return of the Writ. (*Fl. 6. c. 14. § 1.*)

And he shall answer to the King for the Profits of the Land till Judgment.

And shall return a *Cepi in Manus*, with the Names of the Viewers and Summoners. (*Fl. 6. c. 14. § 3.*)

But a *Supersedeas* to the *Grand Cape* shall be granted, *si erronee emanavit*: As, if he does not return a Proclamation made according to the *St. 31 El. 3.* As, if he does not say, that Proclamation was made after Summons. *R. 1 Mod. 197.*

If it does not appear that any Part of the Land lies in the Vill, at the Church of which Proclamation was made. *1 Mod. 197.*

If the Return says, Proclamation was made *secundum formam Statuti*, generally, without saying, that it was of a Summons upon the Land. *R. 1 Mod. 197. Hob. 133.*

The Sheriff upon the *Grand Cape* cannot carry away any Profits of the Land, but only seise it generally. *R. 1 Leo. 92.*

(D. 5.) *Petit Cape.*

In all *Præcipe's quod reddat*, if there be a Default at the Return of the *Venire facias*, a *Petit Cape* shall be awarded for seising the Lands and summoning the Party.

The *Petit Cape* shall have fifteen Days before the Return.

The Sheriff shall return *Cepi in Manus* to the *Petit Cape*.

But if there be a Default at the Day given for Battle in a Writ of Right, there shall be final Judgment without a *Petit Cape*.

So there shall be final Judgment without a *Petit Cape* in all Cases of a Default after Verdict.

If there be a Departure in Despite of the Court.

So, upon a Default at the *Venire facias* in a *Quare Impedit*.

(D. 6.) *Attachment.*

An Attachment is awarded against a Man for a Contempt to the Court.

As in *Chancery*, if a Defendant does not appear upon Service of a *Subpæna*. *Vide Chancery, (D. 3, 4.)*

So it goes as an Original Process in an Affise of *Novel Disseisin*, or of Nuisance.

So in many Writs of *Præcipe quod faciat*, if the Tenant do not appear upon the Summons, the Process shall be continued by Attachment and Distress infinite.

An

An Attachment ought to be executed by the Sheriff, by taking Pledges of the Party for his Appearance, and Return of the Attachment by Pledges.

And if he does not appear afterwards, the Pledges shall be amerced.

Or, by Attachment of the Goods of the Party.

The Sheriff may attach any moveable Goods of the Tenant or Defendant himself.

So the Sheriff ought to return the Certainty and Value of the Goods; for, *per Catalla ad Valentiam* so much, is not sufficient. *R. Cro. El. 13. Cart. 225.*

And when he attaches Goods, he does not return Pledges.

And if the Party does not appear, the Goods attached are forfeited. *Cro. El. 13. Semb. Cart. 225.*

But a Clerk cannot be attached by his Goods, but only by his Person, or his Lands, if he has a Lay-fee.

So, a Lay-Man cannot be attached by his Lands, or any Parcel of a Freehold.

Nor, by a Thing fixed to the Freehold. *20 H. 7. 13. b. 21 H. 7. 26. b.*

Nor, by a Chattel Real.

Nor, by his Apparel, or Horse, on which he rides, if he has other Goods.

So the Sheriff ought to attach only a single Thing, so much as will make the Defendant appear; not divers Goods, and of great Value. *Lut. 1457.* So much as is sufficient for the Debt. *Cart. 225.*

And if he does it, and this appears upon Record, Trespass lies. *Lut. 1457.* Otherwise, if the Value be denied, or taken by Protestation, whereon the Plaintiff demurs: For then the Value is not admitted. *R. M. 4 Geo. 2. in the Exchequer int. Swindell and Brettnall.*

(D. 7.) *Distingas*.

A *Distingas* is a Process which issues, if the Defendant does not appear at the Return of the Summons, or Attachment: And it is called Distress infinite, because it goes till Appearance.

And the Grand Distress, because it is many Times awarded instead of the Grand Cape.

The Sheriff upon a *Distingas* takes all the moveable Goods of the Party, and the Profits of the Land from the Teste of the Writ, which Issues are forfeited to the King, and estreated into the Exchequer, if the Party does not appear.

And the Sheriff returns *Manu capt' per A. unde Exit' 20s. &c.*

If a *Distingas* goes instead of a Grand or Petit Cape, and the Sheriff returns Issues, or *Nihil*, and at the Return the Tenant or Defendant makes Default, final Judgment shall be given.

The Issues upon *Distingas*'s ought to be estreated the last Day of every issuable Term. *1 Sal. 55.*

Or by special Rule; but this shall not be done without special Cause. *R. 1 Sal. 55.*

The Issues returned upon a *Distingas* ought to be reasonable, tho' the Writ says, *per omnia Terras et Catalla.*

And therefore, it is sufficient, that he return the Profits which may arise after the Teste, and before the Return of the Writ. *27 H. 8. 3.*

Or, in a Personal Action, so much as may be the Charge of the Process.

[The Court may order Issues to be increased on *alias* or *pluries*, at their Discretion, usually five Times; the former in C. B. *Bernes 418, 420, 421, 422.*]

(D. 8.) *Venire facias*.

A *Venire facias* is in the Nature of a Summons to bring the Party to answer; or against Jurors.

[*Venire Facias* left at the Defendant's House is good, though he is beyond Sea. *Brier v. Lansdown*, in *Sc. M.* 1720. *Bunb.* 67.]

[*Venire Facias* was the old Process of the Court of Pleas in the *Exchequer*. *Ibid.*]

As to a *Venire facias Juratores*, *Vide Enquest*, (C. 1, &c.)

(D. 9.) Judicial Process in a Real Action; Summons in *Auxilium*, &c.

As to *Petit Cape*, *Vide Ante*, (D. 5.)

As to Summons *ad Warrantizandum*, and other Process against a Voucher, *Vide Voucher*, (D. 1, &c.)

As to Process for Trial by Battle, or the Grand Affise, *Vide Battell*, (A. 1, 2, 3.)

As to Process for Trial in other Actions, *Vide Enquest*, (C. 1, &c.)

As to Process for Execution by *Habere facias Seisinam*, *Vide Execution*, (A. 2.)

By *Scire facias* upon a Fine, or Judgment, *Vide Fine*, (E. 15.)—*Execution*, (A. 6.)

(E) Process in Personal Actions.

(E. 1.) Summons.

IN all Personal Actions for Debt, or upon Contract, the original Process is Summons: As, in Debt, *Detinue*, *Covenant*, &c.
So, in Dower.

(E. 2.) Attachment.

So, in *Trespass*, and other Personal Actions *Vi & Armis*, the original Process is an Attachment. *Vide Ante*, (D. 6.)

(E. 3.) Capias.

Vide Pleader, (2 W. 3.)

As to a *Capias pro Fine*, and *Capias Utlagatum*, *Vide Execution*, (B. 1, 2.)—*Pleader*, (2 W. 6.)—*Utlagary*.—*Wales*, (B. 2.)

Capias ad Satisfaciendum, *Vide Execution*, (C. 9, &c.)—*Bail*, (R. 4.)

Capias si Laicus, *Vide Statute Staple*, (D. 4.)

Testatum Capias, *Vide Post*, (E. 7.)

(E. 4.) Judicial Process.

Judicial Process in Personal Actions, by the Common Law, was by *Levari facias*, or *Fieri facias*. *Vide Execution*, (C. 3, 4, &c.) (E. 4.) *Levari facias*,

A *Levari facias* requires the Sheriff, *Quod de Terris et Catallis* of the Defendant *levari faciat Denarios*, &c. *Pl. Com.* 441. a.

And it is in the Nature of an Original; as, upon a Recognizance, &c. by a Clerk. *Reg.* 299. b. 300. *F. N. B.* 265. D. *Vide Statute Staple*, (D. 3.)

Or Judicial, after Judgment, against any Person, Ecclesiastical or Lay: for it issues out of the Record in the Court where the Record is resident. *F. N. B.* 265. D.

In all Cases where a *Levari facias* issues, the Land is Debtor. *Skin.* 619.

By the Common Law, after Judgment or a Recognizance acknowledged, within the Year the Plaintiff might have a *Fieri facias*, (as well as a *Levari facias*) which commands *Quod de Bonis et Catallis fieri faciat*, &c. 3 Co. 12. a. *Vide Execution*, (C. 4, &c.) (E. 5.) *Fieri facias*,

So a *Fieri facias* lies for Damages recovered in an Affise, as well as in Personal Actions. *Reg. Ju.* 18. b. 24. b.

In a *Quare Impedit*, or for Arrearages of an Annuity. *Reg. Ju. 5. b. 26. b.*
 In a Writ of Ward. *Reg. Ju. 43. a.*
 If Part be levied by a *Fieri facias*, there may be another *Fieri facias* for the Residue.

So, if the Sheriff returns, that he is a Clerk, and has no Lay-fee, it may be directed to the Bishop of the Diocese where his Benefice lies. *Reg. Ju. 22. 26. b.*

If he be *beneficiat* in *Hibernia*, it may be to the Justices of Ireland. *Reg. Ju. 43. b.*

If the Defendant has Goods in several Counties, the Plaintiff may have several *Fieri Facias*'s for the Whole, to each County. *R. Dy. 162. b.*

(E. 6.)
Elegit.

So, by the *St. W. 2. 18.* upon a Judgment or Recognizance, the Plaintiff, or Conusee, may have Process by *Elegit*, for all the Goods and a Moiety of the Lands of the Defendant. *Off. Br. 77. Co. L. 289. b. Vide Execution, (C. 14.)*

Tho' he had a *Fieri facias*, or other Execution, upon which Nothing, or only Part of the Debt, was levied. *Vide Execution, (H.)*

But an *Elegit* after a *Fieri facias*, &c. ought to recite how much was levied upon it. *1 Sid. 91.*

(E. 7.)
Testatum Capias, or Fieri facias.

So, if a Process be returned *Nichil*, there may be another Process of the same Nature, with a *Testatum* of the former Writ and Return to the Sheriff of another County. *Vide Execution, (F.)*

If the first Process requires the Appearance of the Defendant, the *Testatum* does not issue before the 4^o *Die post* the Day of Return; for the Defendant has till then to appear. *2 Jon. 200.*

So the *Testatum* does not issue before an Entry upon the Roll, that there are Goods there, &c. and this is the Warrant for the Writ. *R. Hob. 68.*

But there may be a *Testatum Fieri facias* immediately after the Return of the first Writ; for thereby the Defendant has no Day in Court. *R. 2 Jon. 200.*

So the first Writ may be returned in Course by the Attorney, without going to the Sheriff. *R. Sal. 589.*

So, if Judgment be given or affirmed in *Trinity* Term towards the End of the Term, a *Testatum Capias* may issue the last Day, returnable the first Return of *Michaelmas* Term; for the Judgment relates to the first Day of the Term, or it may be returnable in the same Term. *R. 2 Mod. Ca. 190.*

For more concerning Title Process, *Vide Accompt, (E. 1.)—Admiralty, (E. 18.)—Amendment, (C. 1, 2.)—Assise, (B. 9.—C. 2.)—Attaint, (C. 2.)—Audita Querela, (E. 1.)—Certiorari, (H. 1, 2.)—Chancery, (D. 1, &c.)—County, (C. 9, 10.)—Courts, (P. 8.)—Imprisonment, (H. 1, &c.)—Information, (D. 1.)—Leet, (M. 10.)—Officer, (G. 13.)—Parliament, (L. 18)—Pleader, (B. 7, 8.—V. 1, &c.—2 V. 1.—2 W. 2, &c.—2 X. 1, 9.—2 Y. 1.—3 E. 1.—3 F. 1.—3 I. 1.—3 K. 1.—3 M. 2, 24.—3 N. 2.—3 O. 1.)—Præmunire, (C.)—Prærogative, (D. 73.)—Quod Permittat, (D. 3.)—Quo Warranto, (C. 2.)—Retorn, (A.)—Wales, (B. 1, 2.—C.)*

P R O C H E I N A M Y.

Vide Pleader, (2 C. 1, 2.)

P R O C L A M A T I O N.

Vide Prærogative, (D. 2, 3.)—Copyhold, (R. 9.)

Proclamation of a Fine.

Vide Fine, (G. 1, &c.)—Estates, (B. 25.)

Pro.

Proclamation of Rebellion.

Vide Chancery, (D. 4.)

PROCTOR OF THE CLERGY.

Vide Convocation.

PROCURATIONS.

Vide Tenths, (C.)

PROFANATION.

Vide Sacraments, (F.)—Temps, (B. 3.)

PROFESSION.

(A) Profession ; What shall be.

WHEN a Man enters into Religion after a Time of Probation, when he takes the Habit, and vows Obedience, perpetual Poverty and Chastity, he shall be said to be professed. *Co. L. 132. a.*

But of a Profession made out of the Kingdom, the Common Law does not take Conusance : And therefore, if he be professed in *Normandy*, he may maintain an Action in *England* ; for the Profession cannot be tried. *Co. L. 132. b.*

So a Wife, or an Husband, cannot be professed without the Consent of the Husband or Wife. *Ibid.*

(B) The Effect of a Profession.

A MAN professed in Religion is dead in Law, and his Son shall inherit to him. *Lit. S. 200.*

And he may have an Affise of *Mortd'ancestor*. *Co. L. 132. a.*

So, if he be Tenant in *Chivalry*, his Heir shall be in Ward. *Co. L. 132. b.* Warranty shall descend. *Ibid.*

If he be a Joint-tenant, the Land survives. *Ibid.*

But Profession does not avoid his own Grant : As, if Tenant in Tail makes a Discontinuance, the Issue shall not have a *Formedon* during his natural Life. *Ibid.*

So the Wife of a Man professed shall not be endowed : For Profession is made with the Consent of the Wife. *Ibid.*

So Profession shall not do Wrong to a Stranger ; and therefore, a Descent upon a civil Death does not take away Entry. *Ibid.*

By the *St. 31 H. 8. 6. 33 H. 8. 29. and 5 & 6 Ed. 6. 13.* All Persons professed were made able to purchase, sue, &c.

So the Canon Law being abolished, which made the Disability, the Common Law takes no Notice of him. *R. Sal. 162.*

Vide Abatement, (E. 5.---F. 1.---H. 41.)---Capacity, (D. 1.)---Ecclesiastical Persons, (B. 2.)

PRO-

PROFITS CASUAL.

Vide Prærogative, (D. 49, 50.)

PROHIBITION.

(A) To what Court it shall be.

(A. 1.) To the Temporal Court.

IF Courts exceed their Jurisdiction, a Prohibition may be granted to them. And this, to Temporal, as well as Spiritual Courts. *F. N. B. 39. H.*

As, if a Court-Baron, County-Court, &c. or other inferior Court in a City, Borough, &c. hold Plea of a Matter out of the Limits of their Jurisdiction, a Prohibition may be granted. *F. N. B. 45. F. 46. A. B. 2 Rol. 317. l. 25; 30. Vide Courts, (P. 15.)*

So, if the Cause does not appear to be within their Jurisdiction. *2 Rol. 317. l. 40.*

Or, if a single Cause of Action be divided into several by Covin, to give them Jurisdiction. *2 Rol. 281. l. 27. 317. l. 25.*

So, if an Action in an Inferior Court be founded upon a Judgment in *B. R.* or *C. B.* *1 Rol. 54.*

So, if in such Court a foreign Matter happens, which cannot be there determined, a Prohibition goes to surcease till it be determined: As, in Right Patent in the Lord's Court, if the Tenant join the *Mise*, by Battle, vouch a Foreigner, &c. *F. N. B. 39 H. 40. A. B. C.*

To the *Cinque-Ports*, if they confound Law and Equity together. *1 Sid. 355.*

Or proceed for the Cause of a Suit well commenced at Law. *Hard. 475.*

So a Prohibition lies to the Dutchy Courts, and Courts of a County Palatine, if they hold Plea of Lands out of the Dutchy. *R. 2 Rol. 317. l. 55. Hob. 77. 1 Rol. 42, 71. Vide Franchises, (D. 1, &c.)*

So, to the *Chancery of Chester*, &c. if it holds Plea of a Matter not cognizable there. *R. 2 Rol. 318. l. 10. R. 1 Sid. 189, 309. Mo. 916. Cont. 1 Rol. 246, 331. R. acc. 1 Rol. 252.*

Or, if the *Chancery* there grants an Injunction where it ought not. *R. 2 Rol. 318. l. 15.*

But not to the *Chancery* here. *Dub. Ray. 227.*

So to the Sub-Warden of the Court of *Stannaries*, if he, as Chancellor, directs Things pending in the Courts of the Dutchy of *Cornwall*. *2 Rol. 314. l. 20.*

If the Court of *Stannaries* holds Plea, where it does not relate to Tin, and no Party is a Tinner. *2 Rol. 253, 379.*

So, to the Court of the Council of *York*. *2 Rol. 316. H. Mo. 874. Pal. 527.*

To the Court of the Marches of *Wales*. *Ray. 191. 1 Rol. 83, 190, 263. 2 Rol. 308, 327.*

[To the Grand Sessions of *Wales*, if Process is served out of the Jurisdiction. *Vaughan v. Evans, T. 11 G. Str. 630. 2 Ld. Raym. 1408.*]

To the Court of Honour of the Earl Marshal, if it holds Plea of Things determinable by the Common Law. *R. Ca. Parl. 61, 67. Sal. 553. 4 Mod. 128. Sbo. 353. Vide 1 Sid. 352.*

To the Courts of *London*, if they proceed when their Jurisdiction is determined. *Sal. 425. 4 Mod. 151. Skin. 600.*

To the Court of *Marshalsea*, if it holds Plea in Debt upon a Judgment in *B. R.* *Sal. 439.*

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To the Court of Requests. 2 Cro. 535. Godb. 216. 1 Rol. 163. 2 Rol. 98,

103. To the Commissioners of Appeals for the Excise. 3 Mod. 271.

To the Court of Exchequer, if it grants an Attachment for a Proceeding in B. R. Dub. Sal. 550. D. 1 Rol. 252.

To a Court by Usurpation, without lawful Authority. Sal. 553.

As, if it usurps Visitation Authority. Reg. 40, 41. Vide Post, (F. 11.)

(A. 2.) To the Spiritual Court.

So, in the Time of H. 3. and ever since, Prohibitions have been granted to the Spiritual Court, if it holds Plea of a Matter, whereof Conusance there is not allowed. 5 Co. de Jure Eccl. 11.

In the Time of Ed. 1. a Prohibition was granted to a Bishop and his Official, and an Attachment for holding Plea after Prohibition. 2 Rol. 281. A.

So, if any claims Spiritual Jurisdiction, when he has it not, a Prohibition lies. 2 Rol. 313. l. 42. Vide Post, (F. 11.)

As, if a Collector of the Pope holds Plea of Spiritual Things. 2 Rol. 281. l. 23. 313. l. 35.

If any one purchases a Citation from the Pope, to appear before the Archbishop. F. N. B. 44. J.

Or has a Citation to a Court out of the Realm, a Prohibition goes to prevent his answering. F. N. B. 44. H.

If the Archbishop of Canterbury claims a concurrent Jurisdiction with any Bishop of his Province; for he cannot have it but as *Legatus Natus*, which Title was abolished with the Pope. R. 2 Rol. 313. l. 45. Hob. 17.

When it lies to the Court of Admiralty, Vide Admiralty, (F. 2, &c.)

(A. 3.) To restrain a Nufance.

So a Prohibition lies to restrain a publick Nufance. Semb. Skin. 625, 6.

Vide Action upon the Case for a Nufance, (D. 4.)

(B) By what Court.

BY Rot. Parl. 18 Ed. 1. The Chancellor and Ch. Justice have Power to determine what Pleas ought to be prohibited in Causes Ecclesiastical. 2 Rol. 316. H.

And therefore, a Prohibition to the Spiritual Court may be granted by the Chancery. F. N. B. 40. N.

So C. B. may grant a Prohibition. 2 Rol. 317. l. 5, 10. R. 12 Co. 59.

And the Exchequer. Adm. Ca. Parl. 58. R. Pal. 526.

Tho' no Plea be depending there of such Matter. 2 Rol. 317. l. 5.

So the Courts of Law in Chester may grant a Prohibition to the Spiritual Court there, if it exceeds it's Jurisdiction. 2 Rol. 318. l. 25.

So the Court of Great Sessions in Wales, to the Spiritual Court there. R. 1 Sid. 92. but the Reporter makes a Qu.

So B. R. or C. B. may grant a Prohibition to the Spiritual Court in Chester, Lancaster, &c. tho' the Courts there may do it. Cont. 2 Rol. 318. l. 20. Acc. ibm. l. 25. 317. l. 10.

So, to the Court of Marches in Wales, if it holds Plea of a Spiritual Matter of which it has not Conusance, tho' the Superior Court cannot do Right. R. 2 Rol. 313. l. 15.

So, to a Spiritual Court, which holds Plea of Tithes in London; tho' by the St. 37 H. 8. 12. the Jurisdiction in such Case is given to the Mayor of London. R. 2 Rol. 313. l. 25. 2 Inst. 659, 660.

Or, if a Suit be there by an Orphan for a Legacy, Goods, &c. the Conusance whereof, by Custom, belongs to the Mayor and Aldermen of London. R. 5. Co. 73. b. 2 Rol. 313. l. 10.

Or, against an Executor or Administrator, for Goods which belong to Orphans. *2 Rol. 313. l. 20.*

Or, if a Suit be for Probate of a Will, where the Probate belongs to the Lord of a Manor. *Per Popb. 3 Co. 73. b. 8. 2 Rol. 313. l. 5.*

So a Prohibition may be granted by B. R. to the Council of York; if they hold Plea of a Matter within the Jurisdiction of Durham. *R. 2 Rol. 314. l. 15.*

So, if C. B. holds Plea of Lands held of a Subject, the Lord of the Manor may have a Prohibition to the Justices of C. B. commanding them to surcease, and that the Demandant sue a Writ of Right Patent in his Court. *F. N. B. 8 B. 39. H.*

(C) The Nature of a Prohibition.

IN Prohibition, are, 1st, Contempt of the Crown; and 2dly, A Damage to the Party. A Suit for it must be brought in a Temporal Court, and the Party prays a Prohibition; and whether Defendant proceeded or not after the Prohibition, an Attachment goes to bring him into Court. If he has proceeded after the Writ delivered, it is a Contempt; but still it is a Matter examinable, whether the Court have Jurisdiction, or not. If it have not, the Court will prohibit finally, and give Satisfaction. The Party is not to have Damages, if they have Jurisdiction; but if they have none, they have acted against the Prohibition of Law, and done the Party Wrong. *Ede v. Jackson. Fort. 345.*

A Prohibition ought to be granted *ex Debito Justitiæ*. *1 Sid. 65. Per 2 J. Hide cont. Ray. 92. Per all the J. 3 Jac. 2 Inst. 607. Per Keeling, Hide cont. 1 Sid. 178.*

And, being intended for keeping every Court within it's proper Jurisdiction, the Law, as to Prohibitions, cannot be changed but by Act of Parliament. *R. 2 Inst. 601.*

So the Form of a Prohibition cannot be altered but by Parliament. *2 Inst. 601, 2.*

(D) At what Time granted.

WHERE it appears by the Libel, that the Matter was not within the Jurisdiction of the Spiritual Court, a Prohibition lies after Sentence, or before. *2 Inst. 602, 619. 2 Rol. 318. l. 45. Sal. 548.*

So, to a Temporal Court, it lies after Judgment, where the Matter appears to be out of the Jurisdiction. *2 Inst. 602, 619.*

Or, after Execution. *Ibid.*

So, after Sentence and Appeal. *2 Rol. 318. l. 48. 319. l. 20. Agreed 1 Sid. 65.*

[A Prohibition was granted, on a Libel to charge a Man to the Repair of the Church in respect of a Light-house, after Sentence, and an Appeal to the Delegates. *Rebow v. Bickerton, in Sc. T. 1721. Bunb. 81.*]

After an Appeal to the Arches, and then to the Delegates, and Sentence affirmed there. *R. 2 Rol. 24.*

So a Prohibition lies after Sentence, if the Libel be for a Thing within their Jurisdiction, and a Temporal Matter becomes incident, and they refuse such Proof as the Temporal Courts allow; as, Proof by a single Witness. *R. Cro. El. 666. Mo. 907. R. Sbo. 173. 161. 3 Mod. 286. Sal. 547.*

[If in a Suit for a Prestation, Defendant pleads there is no Prescription, and that is denied; yet there shall be no Prohibition till they join Issue on the Plea, and it appears the prescriptive Right will come in Question. *Gooche v. Bishop of London, M. 4 G. 2. Str. 879.*]

So it lies after an Appeal, if a Thing be litigated upon the Appeal, which upon a Prohibition was determined by Verdict, and then a Consultation awarded. *R. 2 Sbo. 195.*

But generally, after an Appeal a Prohibition shall not be allowed if the Matter be not apparent; for by that the Party affirms the Jurisdiction. *2 Rol. 319. l. 10.*

And

And if by Appeal he may have Relief, a Prohibition shall not be granted. *1 Rol. 319. l. 30.*

So, after Sentence, a Prohibition does not go upon Suggestion of a Matter which does not appear by the Libel. *2 Rol. 318. l. 45. Godb. 164.*

As, if a Libel be for Non-payment of a Rate for Reparation of a Church, a Prohibition shall not go, upon a Suggestion that foreign Disbursements, as for Prisoners, &c. are included in the Rate. *R. Lut. 1022.*

If a Libel be for Defamation in calling, *Whore*, upon Suggestion that the Words were Spoken in *London*. *R. in Exchequer inter Head and Winter. H. 5 Geo. 2. * R. 9 Geo. 1. 2 Mod. Ca. 176.*

If a Libel be in the Admiralty, after Sentence a Prohibition shall not go, upon Suggestion that the Contract was upon Land, if it does not appear by the Libel. *[Reported in Bunbury's Reports 312.] R. 2 Mod. Ca. 194. Vide Admiralty, (F. 9.)*

[Before Sentence, Prohibition issues on a Suggestion of Matter of Fact not appearing on the Face of the Proceedings below; after Sentence, it cannot be overturned by bare Averment of the Fact; but if Want of Jurisdiction appears on the Face of the Libel, or on the Proceedings, it shall issue after Sentence. *Smith v. Langley, M. 10 G. B. R. H. 317.*]

[After Sentence, that the new Churchwardens make a Rate to reimburse the former. *Dawson v. Wilkinson, T. 10 & 11 G. 2. B. R. H. 381.*]

So a Prohibition does not go to a Temporal Court after Judgment, where it appears upon Evidence at the Trial, that the Cause of Action arose out of the Jurisdiction. *R. 2 Lev. 230. but Qu. if the Party demurred to the Evidence, and the Demurrer was refused.*

Nor, to the Admiralty. *1 Sid. 331, 2.*

So a Prohibition does not go upon the *St. 23 H. 8.* for suing out of his Diocese, after Answer, and Sentence thereon; for the Party acknowledged the Jurisdiction. *R. 2 Rol. 318. l. 40. Adm. P. 1 W. & M. inter Tiler and Mantle. Sal. 548. Vide Post, (F. 9.)*

A fortiori, not after Excommunication, and a Writ of *Excommunicatio capi-endo*. *R. 12 Co. 77.*

So a Prohibition shall not go after a Suit is intirely determined: For there is not any to whom it may be directed. *Per Cur' 1 Sid. 166.*

So, if a Prohibition be granted, and afterwards Sentence and an Appeal pass, it cannot then be used. *R. 2 Cro. 429. Vide Post, (K. 1.)*

So a Prohibition does not go after a Writ of *Excommunicato capi-endo* against the Defendant, tho' the Cause appears to be out of the Jurisdiction, or is pardoned: For the King's Writ shall not be discharged by the Prohibition, nor the Party delivered by it. *R. 12 Co. 76.*

(E) At whose Instance.

SO, where the Court has no Jurisdiction, a Prohibition may be granted upon the Request of a Stranger, as well as the Defendant himself. *2 Inst. 607.*

So, upon Motion of the Plaintiff himself, who exhibited the Libel. *2 Inst. 602, 607. R. 2 Rol. 312. l. 10. Mo. 780.*

[But if a Wife libel to recover her Fame, Prohibition shall not be granted on the Husband's Motion. *Tarrant v. Mawr, M. 10 G. Str. 576.*]

So a Prohibition may be sued by him in the Reversion, if a Libel be for Tithes against his Lessee. *Cro. El. 55. Mo. 915.*

(F. 1.) For what Causes granted.

A Prohibition shall be granted to the Spiritual Court in all Cases, where the Ecclesiastical Judge proceeds in a Matter out of their Jurisdiction.

Tho' the Temporal Court has not Cognizance of the Matter for which the Libel is in the Spiritual Court; for it is a sufficient Cause for a Prohibition, that the

the Ecclesiastical Court exceeds its Jurisdiction. *Calder v. Ash*, 47 A. 2d 842, 174 Va. 442, 1945.
(A. 2.)—*Post*, (F. 11.)

So if a Churchwarden has had his Accounts allowed in Vestry. *Wainwright v. Bayliss*, 119 A. 2d 842, 174 Va. 442, 1945.
Robinson, H., 1727. *Bunt*, 2478. *Snowden v. Herring*, 1730. *Bunt*, 2864.
As if a Libel be for Non-petition for a suggestion that foreign Disbursements, as for

(F. 2.) If Freehold be concerned.

(F. 2.)
As, a Title to
Lands or Te-
nements.

In the Time of Ed. 1. it was enacted, that Constantes of *Blas de Feodibus*,
Libertatibus Feodalibus, Maneriis, Advocacionibus Ecclesiasticis, Recognitionibus
Laicis Feodum concernentibus, belong to the King's Courts, and ought not to be
sued before the Ecclesiastical Judge. 2 Inst. 600.

And if they are, a Prohibition lies. *F. N. B.*, 104.

As, if a Suit be in the Spiritual Court *de Castris, Villis, Maneriis, &c.* 2 Rol.
282. l. 20.

So if a Suit be in the Spiritual Court for inclosing his Land next to the
Church-yard. *Vide Post*, (G. 3.)

[If the Bounds of a Church-yard come in question] *Perr v. Gresham*, 8
G. 2. Str. 1003.

For a Way to the Church. *Vide Post*, (G. 3.)

For the Making an Entertainment for the Parishioners, at his House in their
Perambulation. *Vide Post*, (G. 3.)

For a Seat to which he has Title by Prescription. *Vide Post*, (G. 3.)

[If One sued for disturbing a Person in his Seat at Church, suggests that he
purchased an ancient House, with this Seat belonging to it, to him and his Heirs.
Witcher v. Chesham, 106 G. 2. Wilk. 17.]

[If there are reciprocal Prescriptions to a Seat in a Church, for they adjudge one
to be good. *Paxton v. Knight*, 138 G. 3. 1 B. M. 314.]

[If one has a Prescription to have a Seat in a Church, and the Seats are pulled
down without his Consent, and new Ones built by the Ordinary on Part of the
Place where the old One was; tho' he have as much Seat as he had before, only
not in the same Place, it is illegal; and if Spiritual Court interpose, Prohibi-
tion lies. *Archer v. Sweetnam*, 111 G. Forr. 346.]

(F. 3.)
To an Ad-
vowson, or
Church.

So, if a Suit be in the Spiritual Court concerning the Right to an Advowson,
a Prohibition goes.

Or concerning the Right to a Presentation. *R. 2 Rol.* 173.

So, after Induction, whereby the Church is full at Common Law, a Prohi-
bition shall be granted, if a Suit be in the Spiritual Court, upon Pretence that the
Institution was not good; for by Consequence the Right to the Church will be
determined by the Spiritual Law, and all *Quare Impedit* ousted. *R. 2 Rol.* 282.
3. 30. 294. l. 10. *Hob.* 15. 1 *Sid.* 293. *R. Mo.* 861.

Tho' a *Quare Impedit* be depending at the same Time. *R. 2 Rol.* 204. l. 5.

Tho' Institution was granted after a *Caveat* entered, which does not vitiate the
Institution, except by the Spiritual Law. *R. 2 Rol.* 282. l. 40. 1 *Rol.* 228.

Or, after a *Duplex Querela* commenced in the Spiritual Court by the other Party.
R. Mo. 879.

So, if a Suit be in the Spiritual Court for depriving a Clerk, because the Insti-
tution was not good; for the Church will be avoided by it. *R. 2 Rol.* 282. l. 45.

Or, to repeal Institution and Induction, because he was presented by Simony.
R. 2 Rol. 292. l. 25.

So, if a Presentee, to a second Benefice without a Dispensation, *ex uberiori*
Cautela obtains a Presentation from the King, and the Bishop takes Time to
be advised concerning the Institution, pending which B. procures a Presentation
from the King, and Institution and Induction upon it; a Prohibition shall go, if
a Suit be against the Bishop for his Injustice; for this tries the Right to the
Church. *R. 2 Rol.* 293. l. 10.

So, if B. be sued for obtaining Institution and Induction after another was in-
ducted. *R. 2 Rol.* 293. l. 5.

So, if a Patron presents after a Recovery in a *Quare Impedit*, and an Inhibition is granted by the Spiritual Court to stay Institution; a Prohibition goes. *R. 2 Rol. 294. l. 25, 28, 31.*

So, after Recovery in a *Quare Impedit*, if the Patron presents, and Institution is made, and then upon a *Caveat*, an Inhibition is granted by the Spiritual Court to the Archdeacon, not to induct; a Prohibition shall go: Otherwise, all Trials by *Quare Impedit* are ousted. *R. 2 Rol. 294. l. 15.*

So, if a Suit be in the Spiritual Court to repeal a Super-Institution made after a Recovery in a *Quare Impedit*, and before Removal of the Incumbent by a Writ to the Bishop. *R. 2 Rol. 292. l. 45. 1 Rol. 62.*

Or, after Induction upon a second Institution. *R. 2 Lev. 125.*

So, if Institution is delayed for two Months (for which only one Month is allowed by the Canon) upon which a *Duplex Querela* is sued by the Patron to prevent a Presentation by Lapse, and yet the Bishop after six Months presents by Lapse, a Prohibition goes. *2 Rol. 294. l. 35.*

So, by the *St. Ed. 1. intitled Prohibitio formata de Statuto Articulorum Cleri (incerti Temporis)* (*Rast. Abr. Prohib. 8.*) Conusance of Pleas of Offices, &c. belong to the King's Courts, and ought not to be drawn before a Spiritual Judge. *2 Inst. 600.* (F. 4.) To an Office. *Vide Post, (G. 4.)*

And therefore if a Suit be in the Spiritual Court for an Office which concerns a Spiritual Matter, a Prohibition goes, for the Office is Temporal, and the Party has a Freehold: As for the Office of Register of a Bishop. *2 Rol. 285. l. 45. 2 Rol. 306.*

Tho' the Suit be upon a Supposition, that a prior Grantee had forfeited his Office for Recusancy; for the Freehold will come in Debate. *R. 2 Rol. 285. l. 35.*

So, if a Suit be in the Spiritual Court for the Office of Chancellor. *R. 2 Rol. 285. l. 50.*

Or, to deprive him; for his Patent will be thereby avoided. *Semb. 4 Mod. 27.*

Tho' the Deprivation be for his Ignorance of the Canon Law, of which the Spiritual Court is the proper Judge. *R. cont. 2 Rol. 286. l. 2. Cro. Car. 65. Lat. 228. Semb. acc. 4 Mod. 27.*

So, if the Suit be for the Office of a Commissary made by the Lessee of a Prebend. *R. Ray. 88.*

So, if the Ordinary proceeds to deprive the Master of a School, who has a fixed Allowance, without Cause, a Prohibition goes. *R. 2 Rol. 283. l. 5.*

Or, to deprive a Parish-Clerk, chose by the Parishioners; for it is a Lay-Office. *R. Godb. 163.*

Or, tho' chosen by the Parson. *Dub. F, g. 273.* if the Cause for Deprivation be an Offence determinable by the Common Law, before Conviction there. *Semb. F, g. 190.*

[If Parish-clerk is deprived, another appointed, and the old One libels the new, Prohibition lies. *Tarrant v. Haxby, T. 30 & 31 G. 2. 1 B. M. 367.*

[If One is sued for executing the Office of Deputy Parish-clerk, without Licence of the Ordinary. *Peake v. Bourne, M. 6 G. 2. Str. 942.*]

But the Spiritual Court shall proceed against an Officer in the Ecclesiastical Court, for an Offence contrary to the Duty of his Office, tho' Deprivation may ensue. *Semb. F, g. 190.*

(F. 5.) If Chattles or Debts are concerned.

So by the *St. Ed. 1. intitled Prohibitio, &c. (Rast. Abr. Prohib. 8.)* Conusance de Rebus & Causis Pecuniarum, & aliis Debitis & Catallis, quæ non sunt de Testamento aut Matrimonio, belong to the Temporal Court, and shall not be drawn before a Spiritual Judge. *2 Inst. 600. 2 Rol. 218. N.*

And, if they are drawn before the Spiritual Court, a Prohibition lies. *F. N. B. 40. H.*

And therefore, if a Suit be there for any Goods or Chattles, tho' they belong to the Church, a Prohibition lies: As, if a Suit be for Ornaments, or Goods given to the Church, 2 *Inst.* 492.

For a Bible, Service-Book, Chalice. 2 *Inst.* 492. 1 *Rol.* 255.

For an Image taken out of a Church. 2 *Inst.* 492.

For a Pope's Bull, or other Charters, or Writings, granted to a Church. 2 *Inst.* 492.

So, if a Suit be there for the Profits of a Benefice taken (unless it be by Sequestration, or Authority of the Spiritual Court.) R. 2 *Rol.* 293. l. 20.

For Trees cut down in the Church-yard. 2 *Rol.* 311. l. 27. *Cont. Godb.* 259. *Acc.* if the Suit be for Damages. 1 *Rol.* 255.

For Bells taken out of a Church; for the Property is in the Churchwardens, who may have *Trover*. R. *Sal.* 547.

Or, for Organs taken out of a Church, R. *Rol.* 57.

So, if it be for detaining Goods of an Intestate, whereby he cannot exhibit a full Inventory; upon which the Defendant pleads Property. R. 4 *Leo.* 150.

So, if a Suit be for a Thing, for which Damages are recoverable at Common Law: As, upon a Promise to pay such a Sum.

Tho' it be to be paid, when his Daughter shall marry. F. N. B. 44. A.

If a Suit be for Tithes severed, which a Stranger afterwards carried away. *Cro. El.* 607.

So, if a Suit be for Proctor's Fees; for it is a Temporal Duty, for which a *Quantum meruit* lies. 5 *Mod.* 238. 1 *Sal.* 333. R. 1 *Mod.* 167. *Skin.* 589.

So, if it be for Register's Fees; for the Spiritual Court cannot establish a Fee. R. 1 *Sal.* 333. 4 *Mod.* 254.

So, if a Suit be for Debt, or upon a Bond in the Spiritual Court, a Prohibition lies. F. N. B. 40. H.

Tho' the Party acknowledges himself indebted, or makes a Promise to pay, in the Spiritual Court. F. N. B. 41. B. C. E.

Or, the Debt was recovered there, and the Plaintiff sues to have Execution. F. N. B. 41. D.

Or, the Bond was given to perform a Sentence there. 2 *Rol.* 302. l. 15.

So, if a Libel be founded upon a Covenant to pay Tithes. *Semb.* 1 *Leo.* 10.

So, if a Sentence be in the Spiritual Court, and Costs, and afterwards a Prohibition is granted, and upon Debate a Consultation, and then the Spiritual Court gives Costs *de novo* for the Delay by the Prohibition; for those Costs *de novo* a Prohibition goes. R. 2 *Rol.* 119.

But, for a Legacy or Marriage-Portion, Suit may be in the Spiritual Court. *Vide Post*, (G. 15, 17.)

So, for Costs recovered there. F. N. B. 52. D. M.

So, for Procurations, Synodals, &c. tho' a Prescription is denied; for they are due *de Jure*. Ray. 360.

So, if Bond be given in the Spiritual Court for a Matter Testamentary, or Matrimonial. F. N. B. 41. B. *Per Dod.* 2 *Rol.* 160. *Vide Post*, (G. 15, 16, &c.)

So, for the Profits of a Benefice taken in Time of Sequestration. 2 *Rol.* 293. l. 23.

So, if a Covenant, &c. be mentioned only as incident, but the Libel is founded upon an Endowment, &c. a Prohibition does not lie. R. 1 *Leo.* 10.

(F. 6.) If the Suit be for a Criminal Matter.

So, by the *St. Ed.* 1. intitled *Prohibitio*, &c. (*Rast. Abr. Prob.* 8.) Continuance of Pleas of Felons, Malefactors arraigned, Robbers, belongs to the King's Court, and shall not be drawn before a Spiritual Judge. 2 *Inst.* 600.

So, if a Suit be there for Perjury in a Temporal Cause. 22 *Ed.* 4. 20. *Bro. Jurisdiction* 20.

If a Suit be *ex Officio*, which requires an Answer upon Oath to a Criminal Matter. 1 *Sid.* 374.

So,

So, if there be an Indictment for an Assault with Intent to ravish, if a Suit be afterwards in the Spiritual Court for Solicitation of Chastity, a Prohibition shall go. *R. Sal. 552.*

But the Spiritual Court has Jurisdiction for Punishment of a Crime committed in the Spiritual Court, and in a Cause within their Conuſance: As, Perjury in the Spiritual Court in a Cause of Matrimony. *1 Sal. 134. Semb. 1 Sid. 217. Vide Poſt, (G. 13.)*

Forgery of Orders. *1 Sal. 134.* When a Suit is there for Deprivation. *R. 1 Lev. 138. 1 Sid. 217.*

Extortion in an Officer of the Spiritual Court. *1 Sal. 134.*

So the Spiritual Court ſhall proceed for the Punishment of Adultery; tho' an Action for Assault and Battery be againſt the Defendant for the ſame Fact. *Sal. 552.*

[To a Suit for marrying without Banns or Licence; for it is Felony; by 26 G. 2. c. 33. ſſ. 8. *Campbell v. Aldrich, T. 30 & 31 G. 2. 2 Wiſſ. 79.*]

(F. 7.) Or a Matter *contra Pacem.*

So, by the *St. Ed. 1.* intituled *Prohibitio, &c. (Raſt. Abr. Prob. 8.)* Conuſance of Pleas of Diſtreſſes, Executions, Attachments, *Vi Laicâ*, Arrests, Aſſiſes, Juries, Secular Customs belong to the King's Court, and ſhall not be drawn before a Spiritual Judge. *2 Inſt. 600.*

And therefore, if a Suit be in the Spiritual Court for Treſpaſs, a Prohibition lies. *F. N. B. 40. M. 43. G.*

Tho' it be for Entry into an Houſe, to the Intent to commit Adultery. *R. 2 Inſt. 606, 7.*

For cutting down Trees in the Church-yard. *2 Rol. 311. l. 27.*

If an Archbiſhop proceeds againſt a Biſhop for impriſoning another in a Temporal Cauſe. *Cro. El. 484.*

So, if a Suit be in the Spiritual Court for Night-walking. *2 Inſt. 606, 7.*

(F. 8.) If a Remedy be given by Statute.

So, if Remedy be given in any Caſe by Statute, in a Temporal Court, a Prohibition lies to the Spiritual Court, if a Suit be there. *Co. L. 96. b.*

Tho' the Matter be of a Spiritual Nature; except where the Jurisdiction of the Spiritual Court is ſaved by the ſame Statute. *Ibid.*

As, if a Suit be in the Spiritual Court for a Legacy deviſed out of Lands; for Land is not deviſeable by the *St. 32 H. 8. Vide Poſt, (G. 17.)*

So, if a Suit be againſt *A.* for Dilapidations, who claims to be Incumbent by the *St. 12 Car. 2. 17. Semb. 1 Sid. 100.*

[Preaching without Licence is within the Act of Uniformity, and therefore Prohibition lies to Suit in the Spiritual Court for it. *Herbert v. Dean and Chapter of Weſtmiſter, M. 6 G. Fort. 345.*]

[But Prohibition does not lie in a Suit in the Eccleſiaſtical Court againſt a Quaker for Repairs of the Church, on *Stat. 7 & 8 W. 3. c. 34.* tho' the Act gives a Remedy before Juſtices of Peace, for the old Remedy is not taken away; ſo in the Caſe of ſmall Tithes, *per Stat. 7 & 8 W. 3. c. 6. Screen v. Cockernutt, T. 2 G. 2. Fort. 347.*]

(F. 9.) If a Man be cited out of his Dioceſe.

So, by the *St. 23 H. 8. 9.* No Perſon ſhall be cited out of the Dioceſe, or Peculiar where he dwells, unleſs it be for an Offence done by a Spiritual Judge, or upon Appeal; or where the immediate Ordinary dare not, or will not convene the Party; or be himſelf, directly, or indirectly, Party to the Matter of the Suit; or by Requeſt, (in Caſes where the Civil or Canon Law allows ſuch Requeſt) intreat his Superior to examine or determine the Matter, on Pain of paying double Damages, and Coſts for the Vexation, and 10*l.* for every Perſon ſo cited, &c.

Provided,

Provided, an Archbishop may cite out of the Diocese for Heresy, if the Ordinary consent, or do not his Duty.

Provided also, an Archbishop may cite any out of his Diocese for Probate of a Testament.

And therefore, any one cited out of his Diocese, may have a Prohibition before Appearance to the Suit, as well as an Action for double Damages, &c. *Dub. 2 Cro. 321. Adm. Cro. Car. 97.*

So, if a Man be cited out of a Peculiar where he dwells, before the Bishop, he shall have a Prohibition. *R. Cro. Car. 162. Cont. per 3 J. 1 Rol. 136.*

Tho' the Court, to which he is cited, be nearer than the Court of the Place where he dwells. *Pal. 488.*

So a Prohibition lies, where an Archbishop claims a concurrent Jurisdiction with a Bishop, in his Province or See, in the Diocese of such Bishop, and there cites Persons in the same Diocese, and will not absolve till he procures the Cause to be transmitted to his Court; for by such Means the Statute will be eluded. *R. 2 Rol. 313. l. 45. Hob. 17.*

So, if a Cause be transmitted to a Superior, who is not the immediate Superior; for where Transmission is allowed, it ought to be to the immediate Superior, and not *per Saltum*. *R. Hob. 16. R. 1 Sid. 90.*

So, if he be cited at the Suit of the Bishop, or Archbishop himself. *2 Sbo. 146.*

So, if a Suit be in the Arches, when the Defendant dwells in the Diocese of London, out of the thirteen Parishes which belong to the Archbishop; tho' it be as near. *R. Hard. 380.*

But, if a Man resides in the Diocese of *W.* and has Lands in his Occupation in the Diocese of *P.* he may be cited to the Consistory Court of the Bishop of *P.* for not paying a Rate to the Church where his Land lies; for he is an Inhabitant there. *R. 1 Sal. 164.*

So, if Tithes are due for Land in the Diocese of *P.* and the Party removes to the Diocese of *W.* and there lives seven Years, he may afterwards be cited to the Diocese of *P.* *Dub. 5 Mod. 451. R. Sal. 549. Carth. 477.*

So, if a Man usually resides out of the Diocese, but was in the Diocese for Trade, &c. and then there cited, it will be good, and no Prohibition goes, tho' he afterwards returns to his Habitation. *Hard. 421.*

So, if a Man be cited to a Peculiar, where he lives, tho' it be out of the Diocese. *1 Rol. 328. Semb. Skin. 233.*

So, if a Suit be for a Legacy in the Prerogative Court, when the Testament was proved there, tho' the Executor lives in another Diocese. *F.g. 110.*

So, if a Man, cited to the Spiritual Court in his Diocese, dies *pendente Lite*, the Executor or Administrator may be cited, tho' he dwells in another Diocese: For the Suit does not abate by the Death of the Defendant. *R. 2 Cro. 483.*

So, if a Suit be against Executors, and one of them lives within the Diocese, tho' the other is out of it. *1 Rol. 328.*

So a Prohibition does not lie, if a Man in the Diocese of London be cited to the Arches; for there is an antient Composition between the Archbishop and Bishop of London, for such Purpose. *R. Cro. Car. 339. Dub. Ray. 91. Semb. Godb. 191.*

Or, if a Man within an Archdeaconry be sued before the Bishop, where the Archdeacon, by Composition, has a peculiar Jurisdiction. *2 Rol. 357, 446, 448.*

So a Prohibition does not lie where a Cause is transmitted, upon the Request of the Inferior Judge, to his immediate Superior; for to the Prohibition such Transmission may be pleaded. *Cro. Car. 162.*

And it is sufficient to shew, that it was an Ecclesiastical Cause, without saying, what Cause in particular. *R. Cro. Car. 162.*

That it was removed upon Request, without saying, that the Request was under Seal. *Ibid.*

And it is sufficient, that the Cause be transmitted to the immediate Superior; tho' the Bishop be passed by; as, if a Peculiar belongs to the Archbishop, there may be a Transmission of a Cause to the Archbishop, omitting the Bishop.

1 Sid. 90. R. inter Johnson and Lee, 9 W. 3. 5 Mod. 238. but no Judgment there, tho' it seems that it was afterwards given. Skin. 589.

So, it is sufficient to shew a Request of the Bishop, upon Motion, without Pleading. R. 1 Lev. 225.

But if the Transmission be not to the immediate Superior, it is not allowable. 1 Brownl. 46.

So a Prohibition does not lie for a Citation out of his Diocese, after Submission to the Jurisdiction of the Court to which he was cited; as, if such Court has proceeded to Sentence. R. Cro. Car. 27. R. 1 Vent. 61. 2 Sho. 155. Vide Ante, (D.)

Or, if the Defendant has pleaded to the Libel. R. Carth. 33.

Tho' the Suit be in the Diocese of London, and it appears by the Libel that the Defendant dwells at Winchester, which is known to be in another Diocese; for the Court has not Judicial Notice of the Limits of Dioceses. Carth. 34.

Yet, if upon the Libel itself it appears, that the Defendant dwells out of the Diocese, or be in any other Respect out of the Jurisdiction of the Ecclesiastical Court, a Prohibition shall go. Carth. 33.

So a Prohibition did not lie for a Citation out of the Diocese to the High Commission, which was erected by the St. 1 El. after 28 H. 8. 1 Rol. 174.

(F. 10.) If a Remedy be given by the Common Law.

So a Prohibition lies, if a Suit be in the Spiritual Court, for a Matter for which there is Remedy by the Common Law. Co. L. 96. b.

As, for a Fact, for which Trespass lies at Common Law. Vide Ante, (F. 5.)

[To stay Proceedings in Spiritual Court for Proctor's Fees, which depend on Contract and Retainer. Davies v. Williams, T. 10 G. Bunb. 170.]

[If Executor libels for taking a Thing without his Consent, which Defendant pretends was Donatio Causa Mortis; for it may be tried by Action of Trover. Thompson v. Batty, T. 13 G. Str. 777.]

[If Parish-clerk sues for Fees, for he might have assumpsit or quantum meruit, or Bill in Equity. Pitts v. Evans, H. 10 G. 2. Str. 1108.]

(F. 11.) If the Spiritual Court has not Jurisdiction, tho' there be no Remedy elsewhere.

So a Prohibition lies, where the Spiritual Court has no Jurisdiction; as, to a Suit before the Pope's Collector pro Lascione Fidei; for the Pope's Collector has no Jurisdiction in this Realm. Bro. Jurisdiction 20.

If a Bishop, &c. acts as Visitor, where he has no Visitatorial Power. Reg. 40, 41. Sal. 553. Vide Ante, (A. 2.)

If a Court of Judicature, erected after the Fire in London, act after their Authority is determined. 4 Mod. 151. Sal. 425.

(F. 12.) If the Spiritual Court allows a Custom, &c. void by Law.

So a Prohibition lies, if a Suit be in the Spiritual Court for a Thing not allowed by Law: As, if a Suit there be founded upon a Custom void in Law: As, upon a Custom, that the Inhabitants of such a House ought to find Eating and Drinking for the Parson and Churchwardens going in Procession in the Rogation. R. Mo. 916. 1 Rol. 259.

So, if a Suit be there for Tithes of Things, for which none are due by Law. Vide Post, (G. 8, &c.)

So, if a Suit be for a Thing allowed by the Civil Law, which is not lawful by the Common Law; for this shall be preferred. Sti. 10.

So, if a Suit be for a Legacy, when upon a legal Construction of the Will none is due. 2 *Rol.* 414.

[On a Libel in the Court of Dean and Chapter, a Peculiar, against *A.* for preaching without their licence; the Power to license is personal to the Bishop or Archbishop, not to the Ordinary. *Herbert v. Dean and Chapter of Westminster*, *M.* 6 *G.* *Fort.* 345.]

[In a Suit by the next of Kin, for a Distribution of Surplus, there being a Legacy to the Executor. *Hatton v. Hatton*, *P.* 3 *G.* 2. *Str.* 865.]

[If the Administrator of an Executor is sued for a Legacy given by Testator. *Tucker v. Towell*, *M.* 9 *G.* 2. *B. R. H.* 185.]

[Custom to pay a Fee for churching a Woman at the usual Time, whether she is churched or not, is void; because uncertain as to the Time, and unreasonable, for she may be dead. *Naylor v. Scott*, *P.* 2 *G.* 2. *Ld. Raym.* 1558.]

(F. 13.) Or allows illegal, or disallows legal Evidence.

So a Prohibition lies, if another Court determines by improper Evidence: As, if the Commissioners of Appeals for the Excise, determine by Minutes of the Evidence, taken by a Justice of Peace, and do not examine the Witnesses *viva voce*. *R.* 5 *Mod.* 272.

So, if in the Spiritual Court, Payment, &c. pleaded, is disallowed, because Proof of it is made only by a single Evidence. *Cont.* 1 *Rol.* 12. 1 *Sid.* 161. *R. acc.* 2 *Rol.* 414. *R.* 3 *Mod.* 286. 1 *Sbo.* 158. *Carth.* 142. *Vide Post*, (*G.* 23.)

But there shall not be a Prohibition, because the Spiritual Court requires Proof of a Negative: As, if to a Libel for Tithes, the Defendant pleads that the Parson did not read the 39 Articles, and the Court requires Proof of the Plea; for it is presumed at Law, that the Parson did read them, if the contrary be not proved. *R.* 1 *Rol.* 83.

(F. 14.) Or tries a Matter triable by Law.

So a Prohibition lies, if the Spiritual Court proceeds to the Trial of a Custom, or Prescription, which are triable only by the Common Law. *Carth.* 33. *Vide Post*, (*G.* 10.)

If it proceeds to try the Limits of a Parish, which are triable by the Common Law. 1 *Rol.* 332.

So if, upon a Libel for Tithes, the Defendant makes Title by a Lease; for this is determinable by the Common Law. *R.* 1 *Rol.* 61.

So if, upon a Libel for an Account against an Executor, he pleads a Deed of Gift by the Testator of his Goods to another, and the Spiritual Court does not allow it. *R.* 1 *Rol.* 123.

If, on a Libel for Tithes due only by Custom, the Custom is denied. *Per 3 J. Het.* 13.

So, if it proceeds to swear a Parish-Clerk, Churchwarden, &c. named by the Parson, when by Custom he should be named by the Vestry. *R.* 2 *Cro.* 670.

But after Verdict for a Custom or Prescription, which allows a Jurisdiction in the Spiritual Court, a Consultation goes. *Carth.* 33. *Het.* 13, 14.

So a Prohibition goes, if the Spiritual Court, in a Cause within their Jurisdiction, examines to Matters *dehors*; as, where a Grant of an Administration is prayed to be revoked, if the Spiritual Court examines him concerning Covenants, or what Land he has by Descent, &c. *Mo.* 906.

In a Prosecution in the Spiritual Court for Incontinency, if the Spiritual Court examines the Party upon Oath, whether he did the Fact alledged. *R. Mo.* 906.

(F. 15.) If the Court refuses a Copy of the Libel.

So, by the *St.* 2 *H.* 5. 3. and 2 (or 2 & 3) *Ed.* 6. 13. He that sues a Prohibition must deliver to the Court a Copy of the Libel; and therefore, if the Spiritual

Spiritual Court refuses a Copy of the Libel, a Prohibition lies *quousque*, &c. after which the Spiritual Court cannot proceed till a Copy is granted. *Mod. Ca. 308. Sal. 553. R. 4 Ed. 4. 37. b. Hard. 364.*

If a Prohibition be granted before a Libel exhibited, he may afterwards exhibit it, but do nothing *ultra*. *Per Holt, Mod. Ca. 308.*

So a Prohibition shall be *quousque*, for refusing a Copy of the Articles. *R. 1 Vent. 5. Mod. Ca. 87. Hard. 364.*

And, if he be excommunicated for Want of an Answer before a Copy given, the Prohibition shall contain a *Mandamus* for absolving him. *1 Vent. 5. Ray. 170. R. 1 Sid. 403.*

And, if he has appeared, and is excommunicated for that Cause, he shall be absolved without an Oath *ad parend' Mandatis Ecclesiæ*. *1 Sid. 232.*

So there shall be a Prohibition for refusing a Copy of a Libel, tho' the Proceeding be *ex Officio*, as well as between Party and Party. *R. cont. Mo. 756. 2 Cro. 37. Semb. acc. 2 Cro. 388. R. acc. Ray. 170. R. Mod. Ca. 87. Acc. Mo. 917. Per Holt, Sal. 553.*

So there shall be a Prohibition, if the Libel exhibited does not ascertain the Offence: As, if it be for *certain Offences*. *Hard. 364.*

So, after a Prohibition for refusing a Copy of the Libel, if a Copy be granted, he may have another Prohibition upon the Merits. *R. Mo. 917.*

But if a Copy be granted, the first Prohibition shall be discharged *ipso Facto* without a Writ of Consultation. *Mod. Ca. 308.*

And therefore, there cannot be a Prohibition for denying a Copy of the Libel, and upon the Merits, together; for if the Prohibition for Refusal of a Copy be discharged, by the Granting it, there may afterwards be a Prohibition upon the Merits. *R. Mod. Ca. 308.*

So, if a Prohibition for refusing a Copy of a Libel be absolute, it shall be discharged by a *Supersedeas*. *1 Vent. 5.*

So a Prohibition for refusing a Copy ought not to be granted till an *Affidavit* of the Refusal. *1 Vent. 252.*

(F. 16.) If a Parson, &c. does Waste.

So a Prohibition goes, to prevent Damage to any Ecclesiastical Possession: As, if any does Waste in the Houses of a Parson. *R. Mo. 917. 1 Rol. 86, 167.*

Or cuts down Trees growing upon his Lands. *Mo. 917. R. 1 Rol. 335.*

Tho' it be for Iron-works, or other Uses, except the Repair of the Church. *1 Rol. 335.*

So if a Parson, after a Recovery against him in a *Quare Impedit*, continues in Possession, and commits Waste. *Ibid.*

So, if the Vicar cuts down a Tree in the Church-yard. *2 Rol. 111.*

(F. 17.) Prohibition *quoad*, &c.

So, if a Suit be in the Spiritual Court for a Matter within their Conusance, mixed with Matter of which the Court has no Jurisdiction, a Prohibition shall go *quoad* the Part of which it has no Jurisdiction. *R. Mo. 873. Sti. 10. 1 Sid. 251.*

As if, in a Suit for Tithes, the Sentence be for the treble Value, there shall be a Prohibition *quoad* the treble Value. *R. Mo. 873.*

So, if a Suit be against a Bishop for granting Institution and Induction, after a *Duplex Querela* against him, there shall be a Prohibition *quoad* the Repeal of the Institution, not *quoad* the Contempt. *R. Mo. 879.*

(G) ~~When~~ a Prohibition shall not be granted.

(G. 1.) When the Spiritual Court has Jurisdiction.

(G. 1.)
As if the
Suit be circa
mere Spiritu-
alia.

BUT a Prohibition does not lie, if the Spiritual Court proceeds only for a Matter within their Jurisdiction.

By the *St. de Circumspecte agatis* 13 Ed. 1. The Court Christian shall hold Plea of Things *mere Spiritualia*, notwithstanding the King's Prohibition: as, for Penance, Corporal or Pecuniary, *pro Peccato Mortali*.

And therefore, the Spiritual Court may punish, by Ecclesiastical Censures, Apostacy, Heresy, Blasphemy, Schism, &c. 5 Co. 9. a. *De Jure Eccl.* 2 Inst. 488.

So, Fornication, Adultery, &c. 5 Co. *De Jure Eccl.* 9. a.

Incest, or Sollicitation of Chastity. 5 Co. *De Ju. Eccl.* 9. a. 2 Inst. 488.

Suspicious Living without Marriage. R. Jon. 259.

So, Adultery, &c. tho' the Husband had an Action for an Assault upon his Wife. *Per Holt, Sal.* 552.

Neglect to resort to Church for Divine Service. 1 Sal. 166. *Mod. Ca.* 189.

So, if a Man does not resort to the Parish-Church. *Dub.* 1 Sal. 166. *Mod. Ca.* 189. *Vide infra.*

If he resorts to an unlawful Conventicle; for false Worship is within Ecclesiastical Conusance. R. 2 Vent. 44.

So the Granting of Orders belongs to the Spiritual Court. 2 Inst. 488. 5 Co. *De Jure Eccl.* 9. a.

So, the Granting of a Licence *ad Prædicandum*. *Vide infra.*

And a Prohibition shall not go, tho' it be to him who has a Donative. R. 1 Mod. 90. 2 Keb. 876. *Vide infra.*

So the Admission and Institution of a Clerk are within the Jurisdiction of the Spiritual Court. 5 Co. 9. a. *De Jure Eccl.*

So Simony is within the Jurisdiction of the Spiritual Court; and if a Suit be there to punish it, a Prohibition does not lie. 2 Rol. 292. l. 40. Mo. 914. 5 Co. 9. a. *De Jure Eccl.*

Tho' the Suit be after a Presentation to the Church upon the Simoniackal Contract. R. 2 Rol. 292. l. 40.

So, if a Parson be by Simony, and he sues in the Ecclesiastical Court for Tithes, and the Defendant pleads there, that he is *Simoniacus*, a Prohibition does not lie. *Semb. Mo.* 777.

So the Celebration of Divine Service is of Spiritual Conusance. 5 Co. 9. a. *De Jure Eccl.*

And therefore, if the Spiritual Court proceeds to punish the Neglect of the Celebration, a Prohibition does not lie. Co. L. 96. a.

Or, if it proceeds by Libel for not taking the Communion in his Parish-Church. *Hard.* 406.

Tho' he pleads, that he received it *alibi*; for the Spiritual Court is Judge of it. R. *Hard.* 406. R. *Cont. Skin.* 101.

So, if the Libel be, that he did not resort to his Parish-Church. *Semb.* 2 Rol. 438, 455. *Vide supra.*

So, if the Spiritual Court proceeds against any One because he preached without Licence, a Prohibition does not go. *Vide supra.* *Vide F.* 8. *contra.*

Tho' it be by the Incumbent of a Donative. *Semb.* 1 Mod. 90. *Vide Donative.—Vide supra.*

[To a Suit for baptizing, and performing other ministerial Offices in the Parish of A. without Licence from the Bishop. *Campbell v. Aldrich*, T. 30 & 31 G. 2. 2 Wilk. 79.]

[To a Suit for *brawling*, or *smiting* in a Church or Church-yard, tho' there has been no previous Conviction at Law; for that relates only to striking with a Weapon, or drawing it to strike. *Wilson v. Greaves*, H. 30 G. 2. 1 B. M. 240.]

So, if the Spiritual Court proceeds for Defamation of the Common Prayer. 2 Mod. Ca. 338.

So, for Defamation of the Church established in *England*. 2 *Mod. Ca.* 338.
 So the Instruction of Youth is within their Conusance: And therefore a Prohibition does not lie upon a Libel for Teaching School without Licence. 1 *Mod.*
 3. Unless they demand the Penalty by the Statute. *R. 2 Lev.* 222.

So, by the *St. 13 Ed. 1. de Circ. agat.* The Court Christian shall hold Plea (G 2.)
 for not repairing or adorning the Church, or not inclosing the Church-yard. 5 For the Repair or Ornaments of the Church.
Co. 9. a. de Jure Eccl.

And therefore, if a Suit be there for not repairing the Nave of the Church, a Prohibition does not lie. *F. N. B.* 50. *N. 2 Inst.* 489. *R. 5 Co.* 67. *Jeffreys.*
R. 1 Mod. 194, 236.

And if a Suit be for not repairing of the Church, generally, a Prohibition does not go; for it shall be intended only *pro Nave Ecclesiæ*. 1 *Mod.* 236.

So, if a Suit be for not providing Ornaments agreed by the Vestry; as, more Bells, &c. *R. Popb.* 197.

[No Prohibition lies to Suit of the Ordinary to deface Ornaments (as Arms) set up in a Church without his Consent. *Palmer v. Bishop of Exon. M.* 10 *G. Str.* 570.]

[If in a Dispute before the Ordinary about erecting a Monument, one appeals to the Arches, such Appeal lies, and no Prohibition shall go. *Cart v. Marsh, M.* 11 *G. 2. Andr.* 69.]

Or, for not repairing a publick Chapel, which belongs to a Church. 2 *Inst.* 489.

So, if a Suit be against a Parson, or Impropiator, for not repairing the Chancel. 1 *Mod.* 260. 2 *Mod.* 259.

Tho' the Ecclesiastical Court proceeds to sequester the Profits of the Impropiation for such Intent. *Per 3 J. North dub.* 1 *Mod.* 259. *R. cont.* 2 *Mod.* 259.

Tho' it be suggested, that he was overcharged; for he may have Remedy upon an Appeal. *R. 2 Rol.* 289. *l.* 40.

Or, that all the Parishioners are not rated. *Cont.* 2 *Rol.* 291. *l.* 12. *R. acc.* 2 *Rol.* 290. *l.* 15. *R. 1 Vent.* 308.

Or, that he has been exempted for sixty Years; for he ought to shew his Exemption. *R. 2 Rol.* 290. *l.* 10.

Or, that he repairs a Chapel of Ease in the same Parish. 2 *Rol.* 311. *l.* 20. 1 *Rol.* 126.

Tho' a small Matter be inserted in the same Rate, other than for the Repair of the Church; as, for the Prisoners of *B. R.* *Lut.* 1023.

So, if a Rate be by Vestry of a Parish for the Repair of a Church, the Spiritual Court may enforce the Payment. 1 *Mod.* 194. *R. 2 Mod.* 8.

So, if a Rate by Commission of the Ecclesiastical Court, or by some Parishioners, be confirmed by the Vestry. 1 *Mod.* 194.

So, if a Rate for enlarging or rebuilding the Church. 1 *Mod.* 236. *R. 2 Mod.* 222.

[So on a Rate made for erecting Galleries, said in the Libel to be rated according to an ancient and standing Rate, and to be *perpetua futur. temporibus*. *Forty v. Owbear, Fort.* 346.]

So, if a Suit be for a Rate assessed upon the Hall of a Company in *London* in the same Parish. *R. 2 Jon.* 187.

[In a Suit for removing the Reading-desk, where the Judge was the Person that read Prayers, and the Sentence by Default, Prohibition denied; for no Difference between Sentence by Default, or on Hearing; and no Prohibition after Sentence, for there may be an Appeal; and so, if a Man judge in his own Cause. *Owen v. Hughes, M.* 7 *G. Fort.* 199.]

[If in a Cause to obtain a Faculty to erect an Organ, there is a Citation to the Parishioners to shew Cause, the Court will not grant Prohibition, on a Suggestion that the Ecclesiastical Court are about to try a Custom; for the Citation was nugatory, the Parishioners Consent being unnecessary, and the Prohibition would be immaterial. *Butterworth v. Barker, P.* 5 *G. 3. 3 B. M.* 1689.]

But a Prohibition lies, if a Man is charged to the Repairs, who, by Custom, or Law, ought to be exempted. 2 *Rol.* 289. *H.* 290. *l.*

Who shall be exempt, or not, *Vide Esglise*, (G. 2.)

So, if the Charge is expressly to the Repair of the Chancel, as well as *Nave Ecclesie*. 1 *Mod.* 236.

If a Libel be for Non-payment of a Rate made for Repairs by a Commission out of the Ecclesiastical Court, without Consent of the Vestry. *R. 2 Mod.* 8.

So a Prohibition does not lie for a Suit for the not finding decent Ornaments in the Church. 2 *Inst.* 489. *Lut.* 1023.

Who shall find Ornaments, *Vide Esglise*, (G. 2.)

Nor, to a Suit for a Faculty to have a Seat in *Nave Ecclesie*. *Godb.* 200. *Vide Post*, (G. 3.)—*Esglise*, (G. 3.)

Nor, to a Suit for a Way to a Church, if the Prescription, or Right to it is not denied. *Semb.* 2 *Rol.* 41.

But a Prohibition lies upon a Suit for Ornaments, when he was not a Parishioner. *R. 2 Rol.* 262, 270.

Or, if charged by a Rate upon his Land; for it is a Personal Duty. 2 *Rol.* 262, 270.

[The Ordinary cannot punish a single Trespass in the Body of the Church, if it does not hinder Divine Service; as for making a Hole in the Church-Wall, or cutting the Boughs of a Yew-Tree in Church-Yard. *Bensted v. Collins*, P. 1727. *Bunb.* 229.]

(G. 3.)
For not inclosing the Church-Yard &c.

So a Prohibition does not lie, if a Suit be there for not inclosing the Church-Yard. 2 *Inst.* 489.

Nor, for a Nuisance, or other Matter done in the Church-Yard. *R. Carth.* 152.

But a Prohibition lies, if a Suit be in the Spiritual Court to enforce any One, bound by Prescription, to maintain the Fence of his Land next to the Church-Yard; for this is a Charge upon a Temporal Inheritance. 2 *Rol.* 287. l. 35.

[Prohibition lies to a Suit to shew Cause, why Licence should not be granted to build a Charity-School in the Church-Yard. *Saint George Hanover-Square v. Stewart*, H. 13 G. 2. *Str.* 1126.]

Or, for an Erection upon his Soil, not Part of the Church-Yard, tho' he stops the Lights of the Church. *R. Carth.* 152.

So it lies, if a Suit be there *ex Officio* for a Way to the Church. *R. 2 Rol.* 287. l. 1, 5.

Or, for finding Entertainment for the Parishioners, in his House, in their Perambulation. *R. 2 Rol.* 287. l. 15.

So a Prohibition does not lie upon a Suit for Dilapidations. 5 *Co.* 9. a. *De Jure Eccl.*

Nor, to have a Faculty for a Seat in *Nave Ecclesie*. *Godb.* 200. *Vide Ante*, (G. 2.)

Or, for Enjoyment of a Seat which he claims by Prescription, if the other, who prays the Prohibition, does not insist also upon a prescriptive Right in himself. *R. Sal.* 551.

But if a Libel be in the Spiritual Court for a Seat, where the other by Prescription has enjoyed, and repaired it, a Prohibition lies. *Vide Esglise*, (G. 3.)

So, if the Ordinary direct a Seat to A. and his Heirs, without Restriction to the Time that they continue Parishioners, it will be bad, and a Prohibition goes. *R. 2 Rol.* 24.

(G. 4.)
For Admission to a Spiritual Office. *Vide Ante*, (F. 4.)

So a Prohibition does not lie, if a Suit be in the Spiritual Court, for Admission to a Spiritual Office: As, for swearing Church-wardens chosen, according to the *Can.* 3 *Jac.* 89. which directs, That one shall be named by the Minister, the other by the Parishioners.

To swear Church-wardens to do their Office generally. *R. 1 Vent.* 127. 2 *Mod.* 278.

[To a Libel for not taking on him the Office of Chapel-warden, Prohibition does not lie, tho' the Church be a Donation. *Castle v. Richardson*, M. 13 G. *Str.* 715.]

So,

So, if a Suit be, for having been admitted to Deacon's Orders before the Age of twenty-three, or to Priest's before twenty-four Years; tho' this be prohibited by the *St. 13 El. 12. R. 3 Mod. 67.*

So a Prohibition does not lie, if there be a Libel to compel Church-wardens to do their Duty: As, to render an Account according to the *Can. 3 Jac. 89.* where they refuse to account. *Adm. 2 Rol. 71. 2 Jon. 132.*

But, if the Spiritual Court will swear both Church-wardens chosen by the Parson upon some antient Canon, and refuse him chosen by the Parishioners, a Prohibition goes. *R. 2 Rol. 287. l. 25.*

So, where by Custom the Parish chuses both, and the Spiritual Court will admit one chosen by the Parson. *R. 2 Rol. 287. l. 30.*

So, if a Suit be there, to compel the Church-wardens to account there, where by Custom they ought to account before twenty-four Heads of the Parish. *R. Lut. 1029.*

Or, to compel an Oath to do a Thing out of their Office. *Semb. 1 Vent. 114, 127. Vide Esplife, (F. 1.)—Serement, (B.)*

Or, to compel one to be sworn, who has a Privilege to be exempted. *Pal. 392.*

Or, to compel an Account in the Spiritual Court, after an Account before the Minister and Parishioners, according to the *Can. 3 Jac. 89.* without Cause. *R. 2 Rol. 71. Adm. 2 Jon. 132. R. M. 4 Geo. 2. in Exchequer, inter Snowdon and Herring. Vide Esplife, (F. 2.)*

So, if by Custom the Parishioners chuse a Parish-Clerk, and a Libel be to establish another, chosen by the Parson according to the Canon, a Prohibition goes. *R. Godb. 163.*

Tho' the Libel be against him for a collateral Matter, which supposes him no Clerk. *Ibid.*

[If there is a Suit for removing a Parish-Clerk, and punishing him for immoralities punishable by the temporal Laws, there may be a Prohibition as to all but the Deprivation, but not as to that. *Townsend v. Thorpe, T. 13 G. Ld. Raym. 1507. Str. 776.*]

Conusance of the Substraction of Tithes, by a Parishioner from the Parson, belonged originally to the Spiritual Court. *Semb. cont. 2 Inst. 489. Acc. 2 Inst. 363, 490. Vide Dismes, (M. 2.)*

Not the Conusance of the Right to Tithes. *2 Inst. 489, 661.*

But now, by the *St. Circ. agat. 13 Ed. 1. Art. Cl. 9 Ed. 2. 1. 2.* The Court Christian shall hold Plea of the Right, as well as of the Substraction of Tithes, if a fourth Part of the Value of the Church be not demanded.

By the *St. 27 H. 8. 20. and 32 H. 8. 7.* Any Person, Ecclesiastical or Lay, may convene for Substraction of Tithes before the Ecclesiastical Judge.

And by a Proviso in the *St. 32 H. 8. and 2 & 3 Ed. 6. 13.* A Suit for such Substraction shall be before the Ecclesiastical Judge, and not before any other Judge.

So, by the *St. 2 & 3 Ed. 6. 13.* If predial Tithes be carried away without being set out, &c. the Party may sue for the double Value before the Ecclesiastical Judge, according to the Ecclesiastical Laws.

And therefore, in all Cases where a Suit lies by Spoliation in the Spiritual Court for the Right to Tithes, no Prohibition shall go; viz. where the Right to the Patronage, or Presentation, cannot come in Debate. *F. N. B. 37. E. 51. C. Vide Dismes, (M. 1.)*

But where the Right of Patronage may come in Debate, a Prohibition goes; for there Spoliation does not lie: As, if the Defendant does not claim by Institution. *Vide Dismes, (M. 1.)*

Or, claims by the Presentation of another Patron. *Vide Dismes, (M. 1.)—Ante, (F. 3.)*

Or, above the fourth Part of the Value of the Church. *Vide Dismes, (M. 1.)*

So, if a Suit be in the Spiritual Court for Tithes, where the Question is, whether they belong to the Parson or the Vicar, no Prohibition goes; for both

(G. 5.)
For Tithes.
Tho' the Suit
be for a Right
under a
fourth Part
of the Value
of the Church.

(G. 6.)
Or, if it be
between Spi-
ritual Persons

are Spiritual Persons. R. 2 Rol. 310. l. 25. 2 Rol. 55. 2 Bul. 157. 1 Leo. 94, 128.

[As in a Libel against a Parishioner for Tithe of Turnips, who pleads a Custom to pay to Impropriator.]

Or, whether they belong to the Parson or the Chantor. R. 2 Rol. 310. l. 25.

Tho' one of them claims by Letters Patent. R. 2 Rol. 310. l. 45.

So, if a Suit be between the Vicar and the Lessee of the Impropriator. Dub. F.g. 79.

So, if a Suit be by a Parson against an Impropriator being a Layman, where the Question is only, whether they are Great or Small Tithes.

Tho' the Impropriator insists, That, by Custom, the Land ought to be sown with Corn. R. 2 Rol. 310. l. 50. 311. l. 35. 312. l. 30.

Or, if a Suit be for a Portion of Tithes in the Parish of B. and the Parson of B. claims *pro Interesse suo*. R. 2 Rol. 312. l. 20.

Tho' the Bounds of the Parish be in Dispute. R. 2 Rol. 312. l. 30.

So, if a Suit be against A. being a Parishioner, for a Portion of Tithes, or upon a *Modus*, who insists, That it belongs to the Vicar, or *Vice Versa*. R. 2 Rol. 311. l. 10. Mo. 907. Godb. 50.

Or to him, by a Lease from the Vicar. R. 2 Rol. 310. l. 30.

Or to the Vicar, by Endowment of the Parson. R. cont. 7 Car. but R. acc. 11 Jac. 2 Rol. 310. l. 35. Semb. cont. Mo. 780.

[If the Archdeacon sues for Procurations, tho' against a Curate, where there is a Rectory impropriate, and no Vicarage endowed. *Sanderfon v. Glagget*, P. 7 G. Str. 421.]

(G. 7.)
Or, if the Suit
be upon Sub-
traction of
Tithes, &c.

So, if a Suit be in the Spiritual Court for Tithes substracted, or detained, no Prohibition goes. *Vide Difmes*, (M. 2.)

Tho' the Parishioner alledges a Custom to take back 30 Sheafs of Tithes severed, without more. Semb. Godb. 234.

Tho' the Parishioner severs his Tithes, and afterwards carries them away. Mo. 912. Cro. El. 607.

Tho' the Parishioner has made a Composition for them by *Parol*, if there be not a Lease for Life, or for Years. R. Carth. 70.

So, if the Suit be for a *Modus*. Lat. 125. 3 Bul. 241.

Or, for Tithes due only by Custom. Pal. 380.

(G. 8.)
Except where
no Tithes are
due.
As, where a
Thing by
Law is not
titheable.

But if a Suit be in the Spiritual Court for Tithes of Things, for which no Tithes are due *per Legem Terræ*, a Prohibition goes. R. 1 Rol. 379. 1 Rol. Abr. 635. C. 641, 642, 644, &c. Seld. de Dec. cb. 14. S. 3. *Vide Difmes*, (M. 9.)

Or, for Tithes of barren Land, exempted for seven Years by the St. 2 & 3 Ed. 6. 13.

Or, for Tithes *in Specie*, where a Personal Tithe only is due. 2 Cro. 523, 524.

So, if the Suit be for Tithes of a Prebend from a Bishop, who prescribes (as he may, being a Spiritual Person) *in non decimando*. R. 1 Rol. 264.

Or, for Tithes from a Parson, for his Glebe, to the Vicar. R. Cro. El. 578. *Vide Ante*, (G. 6.)

So, if a Suit be for Tithes due by Custom, where the Custom is denied, a Prohibition goes till Verdict for the Custom. R. Het. 13.

(G. 9.)
Or is dis-
charged by
Statute.

So a Prohibition shall go, where a Suit is in the Spiritual Court for Tithes of Lands discharged by the St. 31 H. 8. 13. *Vide Difmes*, (M. 9.)

Tho' the Plea be double, or informal; for if no Tithes are payable, a Prohibition goes. Semb. F.g. 191.

(G. 10.)
Or, by a *Mo-
dus Decimandi*.

So, where the Suit is for Tithes in Kind, when a Parishioner prescribes *in Modo Decimandi*.—What *Modus* is good, *Vide Difmes*, (E. 10, &c.)

Or, when the Suit is upon a *Modus Decimandi*, and the *Modus* is denied. Lat. 210.

Or, a different *Modus* alledged. R. 1 Rol. 419. 1 Vent. 32.

[A Pro-

[A Prohibition cannot be granted on a Suggestion of a *Modus*, till the *Modus* is pleaded below. *Stone v. Harwood*, H. 10 G. 2. B. R. H. 357.]

[If a Man libels for Tithes in Kind, and Defendant insists on a *Modus*, but permits the Spiritual Court to proceed to Sentence, he is too late to apply for a Prohibition. *Offley v. Whiteball*, M. 1717. in Sc. Bunb. 17.]

So, tho' the Parishioner prescribes, That the Parson shall have every tenth Ridge of Land *incipiendo ab Ecclesia*, and afterwards, by Covin, omits to sow those Ridges; for that does not intitle the Parson to Tithes in Kind, but he shall have an Action upon the Case for the Fraud. R. Mo. 913.

Tho' the Suit be by the Vicar, and a *Modus* is alledged to be paid to the Parson. R. 1 Sid. 332.

So, where A. claims a Portion of Tithes in B.'s Parish by Prescription, and B. sues in the Spiritual Court for them; for the Prescription is a Temporal Matter. Per 2 J. Godb. 45. Vide Ante, (G. 6.)

So, if the Defendant in the Spiritual Court claims the Tithes by a Lease; for the Validity of the Lease is determinable by the Common Law. R. 1 Rol. 61. Vide Ante, (F. 14.)

So, if the Defendant lives within an Hamlet, where there is a Chapel of Ease, and out of his Tithes maintains a Clerk there, and pays a certain Sum by Prescription to the Parson for the Residue. R. 4 Leo. 24, 25.

So, if the Suit be for Tithes against B. who pleads that he set out his Tithes, and the Plea is disallowed, because he did not give Notice of the Severance to the Parson. Carth. 143.

If the Suit be against the Vendee of Hay, Corn, &c. after Severance; for they are due from the Occupier of the Lands, who sold it. R. 2 Rol. 78.

If, in a Suit for Tithes for Wool, the Defendant alledges a Custom to pay at *Lammas*, and the Spiritual Court disallows it. R. Cro El. 702.

So, if the Suit be for Tithes, where a Composition is made for them between the Parson and Parishioners, for Life or Years.

Tho' the Composition be by *Parol*, if it is not determined. Semb. cont. Carth. 70.

Tho' the Composition be with A. his Executors and Assigns, during the Life of the Parson, and A. afterwards leases to B. at Will, and the Parson sues B.; for he has a Remedy by Law upon the Contract against A. tho' not against B. R. Pal. 377.

Otherwise, if the Agreement amounts only to a Covenant, not to a Lease or Composition. 2 Rol. 121.

[If a *Modus* is pleaded to a Libel for Tithes by the Vicar, and the Defendant applies for a Prohibition, on a Suggestion that the Tithes are due to the Impropiator, yet if it appears that they are examining Witnesses below to the *Modus*, Prohibition shall go. *Hood v. Hebden*, H. 9 G. 2. B. R. H. 203.]

[If Ecclesiastical Court refuses a Plea of *Parol* Agreement with the Agent of Impropiator, for Purchase of the Tithes, the Corn being then severed, Prohibition goes. *Chave v. Calmel*, P. 6 G. 3. 3 B. M. 1873.]

So, by the St. Circ. agat. 13 Ed. 1. & Art. Cleri. 9 Ed. 2. 1. The Court-Christian shall hold Plea for Oblations, Obventions, Mortuaries, Pensions. 5 Co. 9. a. De Jure Eccl. (G. 11.) For Oblations, Mortuaries, Pensions.

Oblations comprehend the Customary Payments of every Communicant, or for Marriages, Christnings, Churchings, or Burials.

By Custom, in many Places, 2d. is due as an Oblation for every Communicant at *Easter*, and in *London* 4d. for each House.

By the St. 2 & 3 Ed. 6. 13. Every Person, who ought to pay his Offerings, shall yearly pay them to the Parson, &c. where he dwells, at the four Offering Days accustomed for four Years past, or otherwise at *Easter*.

And if a Suit be for those Oblations in the Spiritual Court, a Prohibition does not lie.

But a Prohibition goes, if, by Custom, Nothing is due for Oblations.

So, if a Suit be in the Spiritual Court for a Mortuary due by Law, a Prohibition does not lie. *Dub. Carth. 97.*

But by the *St. 21 H. 8. 6.* None, on Pain of 40*s.* and the Value of the Sum taken, shall take any Mortuary, or any Thing for it, but in Places where Mortuaries have heretofore been used to be paid.

And then no Mortuary shall be demanded, where the moveable Goods of the Deceased are under ten Marks.

And no more than 3*s.* 4*d.* where his moveable Goods are ten Marks Value, clearly above his Debts, and under 30*l.*

And no more than 6*s.* 8*d.* where, at his Death, his moveable Goods are 30*l.* Value, or more, above his Debts, and under 40*l.*

And no more than 10*s.* of what Value soever his Goods be.

And that no Person pay more than one Mortuary, and that at the Place of his most Dwelling or Habitation.

And that no Mortuary be paid for a *Féme Covert*, Child, or any not a House-keeper, nor any Way-faring Man, not having Residence where he dies, whose Mortuary shall be paid at the Place where he mostly dwelt.

Provided, that the Bishops of *Bangor, Landaff, St. David, St. Asaph*, and the Archdeacon of *Chester*, may take such Mortuaries of the Priests in their Dioceses or Jurisdictions, as have been accustomed.

Provided, that where less than the Rates before said hath used to be paid, no more shall be paid than usual.

And therefore, upon a Suggestion, that no Mortuary is due by Custom, and that a Plea of it was denied in the Spiritual Court, a Prohibition goes; for the Custom shall be such as is allowed by the Common Law. *R. Lut. 1069. Semb. 3 Mod. 268. R. Cro. El. 151. Dub. Cro. Car. 238.*

But, if a Suit be for a Pension in the Spiritual Court, a Prohibition does not go. *F. N. B. 51. B. 2 Inst. 491. 2 Sho. 97. 1 Vent. 120. R. 2 Cro. 217.*

And shall be disallowed in all Cases, where a Pension is claimed by the Ordinance of the Ordinary, as a Judge; for the Suit for it ought to be there. *Cro. El. 675.*

So, if the Pension commenced by Grant of the Patron and Ordinary; tho' Annuity lies for it; for it may be sued for in the Spiritual or Temporal Court. *Cro. El. 675.*

Or, if it be claimed by Prescription. *F. N. B. 51. B. Cont. 2 Inst. 491. Acc. 1 Sid. 146. 1 Vent. 3, 120, 265. 1 Sal. 58.*

Tho' the Prescription be alledged, as is usual in the Ecclesiastical Court, only for 40, 50, or 60 Years. *R. 2 Cro. 666.*

So a Prohibition does not go, tho' the Suit be in the Spiritual Court before a Demand; yet, the *St. 34 H. 8. 19.* says, *if wilfully denied.* *R. 2 Rol. 300. l. 45.*

A fortiori, if the Suit be there for a Pension between Spiritual Persons. *R. Godb. 196.*

So a Prohibition does not go, tho' the Pension commenced upon an Appropriation by the Pope's Bull; tho' by the *St. 28 H. 8. 16.* Bulls of the Pope are now void; for this was only Inducement to the Title, which subsists by the Grant of the Pension. *R. 2 Lev. 251.*

So a Prohibition does not go to a Suit there for Proxies, &c. by Prescription, or Grant; for by the *St. 34 H. 8. 19.* the Ecclesiastical Jurisdiction is saved. *Hard. 181.*

But a Prohibition goes, if the Prescription be denied. *1 Vent. 265.*

If he ever had sued for it by a Writ of Annuity. *F. N. B. 51. B. Godb. 196.*

If it be granted by Deed. *Semb. 2 Inst. 491.*

If it be claimed by one who cannot prescribe: As, a Curate of a Chapel of Ease; for he is removeable *ad Libitum.* *Sal. 506.*

(G. 12.)
For Violence
to a Clerk.

So, by the *St. Circ. agat. 13 Ed. 1.* The Court Christian shall hold Plea of Violence to a Clerk: And therefore, if a Suit be there to punish, by Ecclesiastical Censures *pro Salute Animæ*, a Violence done to any One *infra Sacros Ordines*, no Prohibition lies. *F. N. B. 51. K. 52. F. 2 Inst. 492. Sal. 548.*

But

But if a Clerk sues in the Spiritual Court for an Assault, after an Action by him, tried at the Common Law, and a Verdict against him upon *Son Assault Demesne* pleaded, if the Defendant pleads *Son Assault* in the Spiritual Court, and the Plea is refused, a Prohibition goes. *Semb. Skin. 20.*

So, if the Spiritual Court refuses a Plea of *Molliter Manus* in Defence of his Servant, who was assaulted by a Clerk, who sued there for the Violence. *R. Mo. 915.*

So, by the *St. Circ. agat. 13 Ed. 1.* The Court Christian shall hold Plea de *Læsione Fidei.* (G. 13.)
For Breach of Faith.

And therefore, a Prohibition does not lie, if a Libel be to oblige one to Penance, who does not perform his Oath, or Promise. *2 Rol. 283. l. 35, 40.*

So, for Perjury in the Spiritual Court, in a Cause within their Conuſance. *Sal. 134. Bro. Jurisdiction 20. Vide Ante, (F. 6.)*

But if the Spiritual Court proceeds against any for a false Oath in a Temporal Court, or in a Temporal Cause, a Prohibition lies; for *Jurisdictionem non mutat Fidei Interpositio. 2 Inst. 493. 2 Rol. 283. l. 27.*

As, against a Juror, who gives a false Verdict. *2 Rol. 304. l. 20.*

Or an Indictor, who gives a false Oath on an Indictment of Felony. *R. 2 Rol. 304. l. 15.*

So, if a Libel be against one, who swears to pay a Debt, make a Feoffment, &c. and does it not. *F. N. B. 43. D. 2 Rol. 283. l. 30.*

If he swears that he will not sue an Action, and afterwards sues it. *F. N. B. 42. I.*

So, if he takes a Will out of the Spiritual Court, and gives a Bond to re-deliver it, he shall not be sued for a Breach of his Faith, if he does not re-deliver it: For there is a Remedy upon the Bond. *2 Mod. Ca. 327, 8.*

So, if a Man be cited as a Witness in the Spiritual Court, a Prohibition does not lie.

Or, to make Answer upon Oath to a Libel for a Matter within their Conuſance: As, to discover whether he has paid a Rate for repairing the Church. *R. 1 Vent. 339. R. 2 Lev. 247.*

Or, to take the Oath of a Churchwarden. *R. 2 Mod. 118.*

But if any be required to take an Oath, which tends to the Accusation of himself, a Prohibition lies. *2 Mod. 118, 278. Vide Serement, (B.)*

Or, to discover a Thing, which may subject him to Censure or Punishment.

Tho' the Matter be notorious; as, that he was with his Head covered in Church at Divine Service. *Cont. per Wind. sed Q, per Reporter. 1 Sid. 232.*

So, by the *St. Circ. agat. 13 Ed. 1.* The Court Christian shall hold Plea for Defamation, when Damages are not demanded. (G. 14.)
For Defamation.

Where the Defamation charges a Crime merely Spiritual: As, if the Libel be, that the Defendant called him *Heretick, Schismatick.* *2 Inst. 492. R. 4 Co. 20. 7 Co. 44.*

That the Defendant charged him with Adultery. *F. N. B. 51. I.*

Or used Words, which accuse directly with Incontinence. *R. Lut. 1038, 1042.*

As, if he said, *You are a Whore*; for no Prohibition lies for it since 8 Car. *R. Cro. Car. 110. 2 Rol. 297. l. 45. R. 1 Sid. 404, 433. 1 Mod. 21. 1 Vent. 7, 61, 220. R. 2 Lev. 63. Cont. before 8 Car. Jon. 44.*

["Thou art a Jilt and a Strumpet;"] Prohibition denied *per Cur. Ferguson v. Cuthbert, H. 1728. Bunb. 260. Str. 823.*

["*Moll Winter* is a Whore, and a common Whore, and Plier in a Bawdy-House,"] refused after Sentence. *Head v. Winter, H. 1731. Bunb. 312.*

You are a Welch Jade, with an Averment that that imports a Whore. *R. 2 Rol. 297. l. 45.*

He is a Whoremaster. *R. Sal. 692. Skin. 390.*

He is a Cuckold, if the Libel be by the Husband and Wife. *Lut. 1038. 2 Rol. 296. l. 40. Cont. 1 Sid. 248. Cont. per Holt, Sal. 692. R. 2 Lev. 66.*

He

He is a Pandar of A. Per 2 J. Whitl. cont. 2 Rol. 295. l. 55.

She will be a meddling with a —. 2 Rol. 295. l. 45.

He is a Son of a Whore, without more; for that imports that he is a Bastard, and his Mother a Whore. R. 3 Lev. 119.

A Cuckoldly Knave. R. Cro. Car. 339.

You was A's Whore before he married you. R. 3 Lev. 137.

He keeps a Whore in his House. R. 3 Lev. 350.

She has had a Bastard. Dub. Sho. 337.

He is a Wittoll; for that imports that he knows of the Adultery of his Wife. Sal. 692.

Tho' the Words import a Spiritual Crime, which in some Respect is punishable by the Common Law, if the Spiritual Jurisdiction is not taken away: As, if he says, *A. keeps a Bawdy-house*; for tho' it be indictable, the Spiritual Court has a concurrent Jurisdiction. 2 Rol. 296. l. 5. Cont. Noy 117. Vide infra.

A. is a common Bawd. R. 2 Rol. 295. l. 5. Jon. 246. Pal. 521.

Tbou art a Whore, and thy Children Bastards; for the Statute saves the Spiritual Jurisdiction. 2 Rol. 296. l. 25.

A brandy-nosed Whore, and drinks Brandy. R. Sal. 693.

If he says of a Widow, *She was never married, and what is her Son?* R. Cartb. 498.

So, if the Defamation imports any Charge whereby he may have Prejudice in the Spiritual Court: As, if he says of a Parson, *He will preach Nothing but Lies and Malice in the Pulpit.* R. 3 Lev. 17.

He lies with all the Women in the Parish. R. 3 Lev. 18.

So, if he says of a Parson, speaking of his Function, *He is a Knave.* R. 2 Rol. 297. l. 40. Per Holt, 8 W. 3. (Com. Rep. 25.) Semb. Lut. 1054. 1 Sid. 393.

If he says of any Man, *You are a Son of a Witch*: for it is an Impediment to the taking of Orders. R. 2 Rol. 295. l. 5. 1 Rol. 407.

He will not bear a Minister ordained by a Bishop. R. 2 Rol. 295. l. 42.

So there shall be a Libel for Defamation, tho' provoked by scurrilous Words. R. 3 Lev. 137. Semb. Lut. 1054.

But if a Libel be for Words which are actionable, a Prohibition goes: As, if they charge with Felony. F. N. B. 53. F. R. 2 Rol. 295. l. 10. Jon. 246. 22 Ed. 4. 20. Mo. 906. R. Jon. 320.

Or, with Perjury. 2 Inst. 493.

So, if he says, *He was forsworn before a Judge*; for they are actionable, if well alledged. R. Rol. 297. l. 5.

So, if he says of an Heir, *He is a Bastard.* 2 Rol. 292. l. 14.

Of a Woman in London, *She is a Whore.* Lut. 1040, 1042. Thyer v. Eastwick, H. 7 G. 3. 4 B. M. 2032.

[“You are a cuckoldly old Rogue, and was cuckold by a Porter,” spoke in London, Prohibition granted. Vicars v. Worth, M. 8 G. Str. 471.]

[“You are a cuckoldly Dog, and bid the Bitch your Wife come out,” spoke in London, Prohibition granted. Hodgkins v. Corbet, H. 9 G. Str. 545.]

[For the Word *Whore*, tho' it appear on the Face of the Libel to be spoke in London, where Action lies for it, Prohibition denied after Sentence. Argyle v. Hunt, T. 5 G. Str. 187. Fort. 347.]

[Et per Cur.—Matter debors the Libel shall not be alledged after Sentence as Ground for Prohibition, it must arise out of the Libel itself, in defect of Jurisdiction; and in that Case it is never too late for Sentence; and all are a Nullity. Ibid.]

[For the Word *Strumpet* in London, Prohibition denied, because after Sentence; on above Case. Cook v. Wingfield. Fort. 347. Str. 555.]

[If Motion and Rule to shew Cause be before Sentence given below, for calling a Woman Whore, in London, but Rule not served till after Sentence, Prohibition shall not go. Selby v. York, T. 10 & 11 G. 2. B. R. H. 392. Note, This is said to have been ruled on another Point also; viz. that in the Recital of the Libel in the Suggestion, the Words are said to be spoken in the Parish of

of Saint B. in London, or in Parts near adjacent, if it had appeared by the Proceedings, or by Affidavit (which was now too late) to be in London, Prohibition ought to stand, for the Spiritual Judge had no Jurisdiction. *Andr. 7. N. B.* This is contrary to *Argyle v. Hunt*, and *Cock v. Wingfield, supra.*

Of any Woman, *She is a Bawd, and keeps a Bawdy-house*: For it is indictable. *R. Jon. 44. Vide supra.*

[No Prohibition for "You are a Bawd." *Lockey v. Dangerfield, M. 12 G. 2. Str. 1100. Andr. 286.*]

So, if he speaks in London, of a Woman there, Words tantamount to *Whore*. *R. 2 Mod. Ca. 114.*

So, if Part of the Words be actionable, a Prohibition goes for the Whole, tho' the others charge with a Spiritual Crime: As, if he says, *You are a Whore and Thief*. *2 Rol. 297. l. 45. Per Twisd. 1 Sid. 404. R. 3 Mod. 74.*

So, if the Words relate to a Temporal Thing, of which the Spiritual Court has no Conusance: As, *You are a Sower of Sedition among Neighbours*. *R. 2 Rol. 295. l. 35.*

He would have bugger'd me: For that Offence is Felony. *R. 2 Rol. 296. l. 50.*

He kept my Wife in his House against her Will, to make her his Harlot: For he might have false Imprisonment. *Godb. 63.*

So, if Words are spoken in Evidence at a Trial, or Prosecution, for an Offence of which they are spoken. *R. 1 Rol. 61.*

So, if the Spiritual Court refuses a good Justification of the Words by the Common Law: As, to a Libel for saying, *You had a Bastard*, if the Defendant pleads an Order by two Justices, which adjudged him the Father of a Bastard, and the Spiritual Court disallows the Justification. *R. 2 Cro. 535. 625. 2 Rol. 82.*

So, if the Words proceed from Passion merely: As, if a Parson calls another *Drunkard*, upon which he says, *You lie*, and the Parson libels for it. *R. 2 Rol. 295. l. 22. 297. l. 25. Semb. Lut. 1054. Godb. 446.*

[If one Parson says to another, "You are an old Rogue, and a Rascal, and a contemptible Fellow, despised and hated by every Body," Prohibition lies. *Musgrave v. Bovey, H. 6 G. 2. Str. 946.*]

If a Man says of a Parson, *He is a Blockhead, and deserves his Gown be pulled over his Ears*. *R. Sal. 692.*

Or, *He is a Fool, Ass, Goose, &c.* *R. 2 Lev. 41. Godb. 447.*

If a Man calls another *Drunkard*. *R. 2 Rol. 296. l. 30. Godb. 447. Mar. pl. 11, 103. R. Jon. 441. 305.*

Knave. *2 Inst. 493. 2 Rol. 296. l. 45. Jon. 246. D. 1 Sid. 149. R. Sal. 548. 1 Rol. 217. 1 Vent. 2.*

Tho' he be a Parson, if he does not speak in Reference to his Function. *R. 2 Rol. 295. l. 30. Cont. ibm. 40. R. 1 Vent. 2. 1 Sid. 393. R. H. 8 W. 3. (Com. Rep. 25.)*

Base poultry Rogue. *Godb. 447.*

So, if a Man calls another, *Son of a Whore, and thy Mother is a Bitch*. *R. 2 Rol. 296. l. 20. Vide supra.*

If he says, *You are a Quean*. *R. 2 Rol. 296. l. 15. 1 Rol. 217.*

If he says of a Parson, *He is a Churl, or Blacksmith's Son*. *2 Inst. 493. 2 Rol. 297. l. 25.*

Of a Proctor, *He is a scabby Knave, and pickerill Bum-Bailiff*. *R. 2 Rol. 297. l. 15.*

If he says, *He is the Devil, Belzebub, &c.* *Sal. 692.*

Yet, after Sentence, a Prohibition shall not be granted because they were Words of Passion, where the Spiritual Court has Conusance. *Semb. 3 Lev. 350. Lut. 1054.*

Nor, after a Plea, which submits to the Jurisdiction. *1 Vent. 10. Lut. 1042.*

[Where Prohibition is prayed for a Matter not appearing on the Face of the Proceedings to be out of the Jurisdiction, the Suggestion must be verified by Affidavit; therefore, tho' there is a Custom, and that Custom verified by Affidavit, that Whores, and calling a Woman Whore, is punishable at Bristol by

Common Law; yet if there is not an Affidavit that the Words were spoken in *Bristol*, Prohibition shall not go. *Hinds v. Thomson*, M. 12 G. 2. *Andr.* 299. *Driver v. Driver*, H. 12 G. 2. *Andr.* 304. N. B. In this Case it was said, the same Thing was held in *Argyle v. Hunt*, ante.]

[Yet a Rule to shew Cause was granted, why Prohibition should not go, for calling a Woman *Strumpet* in *Bristol*, tho' there was no Affidavit of the Custom. *Power v. Shaw*, P. 17 G. 2. *Wilf.* 62.]

(G. 15.)
For Matters
Matrimonial.

So the Spiritual Court, by Consent of Parliament, and the Custom of the Realm, has Conusance of Matters Matrimonial and Testamentary, tho' they do not belong to them originally. 2 *Inst.* 488.

As, of Marriage, Divorce, Bastardy. 5 *Co.* 9. a. *De Jure Eccl.*

By the *St.* 18 *Ed.* 3. *St.* 3. *ch.* 2. If on Demand of Clergy, it be alledged, that the Prisoner hath married two Wives, or a Widow, the Justices shall not have Cognizance, or Power to try the Bigamy, but it shall be sent to the Spiritual Court.

By the *St.* 25 *H.* 8. 22. A Person married within the Levitical Degrees shall be separate by the Sentence of the Archbishop or Bishop within their Jurisdictions, and no other Authority.

And therefore, if a Libel be for a Marriage without Licence, or Banns published, a Prohibition does not go. *R.* *Jon.* 259. *Vide infra.*

Or, by an insufficient Licence, or not pursuing it. *R.* *Jon.* 259.

[The Spiritual Court has Jurisdiction to proceed against Persons for clandestine Marriage, under the former Canon Law, received and allowed, (but not under the Canons of 1603,) per *Hardwicke C. J.* & tot. cur. *Middleton v. Croft*, M. 10 G. 2. *Str.* 1056. *B. R. H.* 326.]

[Nor has the *Stat.* 7 & 8 *W.* 3. c. 35. which inflicts a Penalty, taken away that ancient Jurisdiction. *Ibid.*]

[If, therefore, a Man and his Wife are sued for being married before eight in the Morning, without Licence or Banns, Prohibition shall go as to the Time, which is only against Canons of 1603, and a Consultation as to the Rest. *Ibid.*]

So, if it be for Punishment of an incestuous Marriage after the Death of the Wife; if they do not proceed to dissolve the Marriage, and bastardize the Issue. *Sal.* 548.

So, if it be to dissolve an incestuous Marriage; whereby the Issue will be bastardized. *R.* 2 *Jon.* 213.

[The Spiritual Court may hold Suit for marrying Wife's Sister's Daughter. *Denny v. Ashwell*, P. 3 G. *Str.* 53.]

To repeal an Administration to a second Wife, because the first Wife is living; whereby the Issue by the second will be a Bastard. *Sti.* 10.

So, if a Libel be in the Spiritual Court for a Marriage-Portion, a Prohibition does not go: As, for such a Sum promised to be given with his Daughter in Marriage. *F. N. B.* 44. A.

So, if a Libel be in the Spiritual Court, that he married without Licence; tho' the Marriage was by an Incumbent of a Donative within his Precinct. *R.* per 3 *J.* 1 *Mod.* 22.

But a Prohibition lies, if the Spiritual Court questions the Marriage after the Death of the Parties. 2 *Inst.* 614. *R.* *Sal.* 548.

Or questions the Power of the Archbishop to grant a Licence by the *St.* 25 *H.* 8. 21. without Publication of Banns. *R.* *Jon.* 259.

So, if a Libel be *pro Jactitatione Maritagii*, after the Husband is convict of Felony in taking her for his second Wife. *R.* 3 *Mod.* 164.

So, if a Libel be to bastardize Issue directly; for Legitimacy shall be determined by the Common Law. *Sti.* 10.

So, if a Libel be, by Practice to dissolve a Marriage for Incest, and bastardize the Issue, upon Confession of the Party only. *Semb.* 2 *Jon.* 213. 2 *Mod.* 314.

(G. 16.)
For Matters
Testamentary.
As, the Probate of a Will.

So for a Matter Testamentary, the Spiritual Court (tho' it had no Jurisdiction originally) yet shall have it at this Day: And therefore the Probate of a Will for

for Personal Things shall be properly in the Spiritual Court, and no Prohibition goes. *Sal. 552. Vide Administration, (B. 6.)*

So, if a Will be for Things Personal, and also for Land, being intire it shall be proved in the Spiritual Court, and no Prohibition goes as to the Land: For the Probate there, as to that, does not prejudice, but shall be null. *R. cont. 2 Rol. 315. l. 10. for it shall go as to the Land. So it was R. 2 Cro. 346. R. Cro. Car. 165. 115. 2 Rol. 315. l. 20. R. 6 Co. 23. b. 1 Rol. 21. 358. 2 Rol. 431. R. Pal. 120.—But afterwards it was R. that it shall not go for any Part. Per 2 J. Cro. cont. 2 Rol. 315. l. 50. Cro. Car. 391, 396. Jon. 355. R. per tot. Cur' 1650. 2 Rol. 315. l. 40. R. Sal. 552. 3. Per Hale, 1 Mod. 90. Hard. 313.*

So the Probate of a Will for Things Personal, and Land, shall not be prohibited in the Spiritual Court, tho' the Question there be, Whether the Testator was *Compos*; Whether the Will was revoked, &c. which avoid the whole Will; for the Determination there will not be Evidence in a Trial upon the Will for the Land at the Common Law. *Cro. Car. 396. 2 Rol. 315. l. 5, 15, 30, 40. Sal. 552. Hard. 131.*

So the Probate of a Will of a *Feme Covert*, of Things in Action, or which she had as Executrix (of which she may make a Will) shall not be prohibited in respect of her Coverture. *Per North, 1 Mod. 211. Per Holt, Sal. 313.*

So, if the Ecclesiastical Court allows a Will by an Infant of sixteen Years; for the Conusance belongs to them. *R. 2 Jon. 210.*

So a Suit for a Legacy shall be properly in the Spiritual Court; for it is not a Debt, but due only by the Will, and no Prohibition goes. *F. N. B. 50. O. (G. 17.) Bequest of a Legacy. 51. H. 53. C. 1 Vent. 233.*

Tho' the Legacy be a Chattel Real: As, a Ward, Term, &c. *F. N. B. 43. F.*

So, if a Testator devises, that his Executor pay a Debt to his Creditor; it shall be a Legacy, for which the Creditor shall sue in the Spiritual Court. *F. N. B. 44. B.*

Or, 10 *l.* in Satisfaction of a Debt of 5 *l.* for it is a new Sum of which no Part was due. *R. 2 Rol. 284. l. 25.*

So, if he devise, that the Goods of the Parish, which he took by Wrong, be re-delivered. *F. N. B. 52. E.*

If he devise a Cow, &c. for Repair of the Church. *F. N. B. 54. A.*

So, if he devises so much *per Ann.* in the Nature of a Rent, to be paid out of a Chattel: As, out of his Stock. *R. 2 Rol. 284. l. 30.*

Or, out of the Profits of a Term for Years; for that is a Chattel. *R. 2 Rol. 285. l. 10.*

Or, out of a Debt due by *A.* *2 Rol. 433.*

Or, out of the Profits of Lands (Part Leasehold and Part Freehold) for seven Years, and afterwards the Years elapse, and the Devisee of the Lands dies before Payment; for Account does not lie against his Executor. *R. per 4 J. Williams dub. 2 Cro. 279.*

[An Executor may be sued for a Legacy, in the Court where he proves the Will, tho' he does not live in that Diocese, and Prohibition does not lie. *Edgeworth v. Smallridge, M. 3 G. 2. Str. 847.*]

But a Prohibition goes, if a Suit be there upon a Devise of Lands or Tenements. *F. N. B. 43. F. R. Pal. 120.*

Or, for a Legacy devised to be paid out of Lands of which he is seised in Fee. *R. 2 Rol. 284. l. 35.*

Tho' it is to be paid out of Land, if there be not Personal Affets. *R. 2 Rol. 284. l. 40. Popb. 58.*

Or, to be paid upon a Sale of Lands. *R. 2 Rol. 284. l. 50. Hob. 265.*

Or, if a Devise be, that Land be sold, and the Money employed in the Payment of Legacies. *R. 2 Rol. 285. l. 15. Hob. 265. Dy. 151. But cont. per 3 J. where it was for Payment of Legacies generally. Dy. 264. b.*

So, if a Suit be for that, which is a Legacy in a Court of Equity only. *2 Rol. 285. l. 32. Hob. 265.*

So,

So, if a Suit be for the Revocation of a Guardianship appointed by Will, pursuant to the *St. 12 Car. 2. 24.* for the Temporal Court is to determine, Whether the Appointment be pursuant to the Statute. *R. 1 Vent. 207.*

So, if a Suit be, to have Money raised by Sale of Lands put into the Inventory; for by the *St. 21 H. 8. 5.* it is not accounted Goods and Chattels of the Testator. *R. 2 Rol. 285. l. 25, 30.*

So, if a Bond be given for a Legacy; for thereby it becomes a Debt. *R. Yel. 39. 2 Mod. Ca. 327, 8. Vide Ante, (F. 5.)*

So a Prohibition goes, if the Spiritual Court proceeds to grant Probate of a Will, which is not so by the Common Law: As, of a Will of a *Feme Covert* made by Covenant or Agreement of the Husband; for it is not properly a Will. *Per North, 1 Mod. 211. Per Holt, Sal. 313.*

If a Probate be by a Peculiar, where it ought to be by a Bishop; or, *& contra.* *Per North, 1 Mod. 211.*

(G. 18.)
Granting or
repealing Ad-
ministration,

So, if a Suit be in the Spiritual Court for the granting, or repealing Administration, in Cases where the Temporal Law does not disallow it, a Prohibition does not go; for it is a Matter of Spiritual Conusance.

So, if Administration to *A.* be repealed, and granted to *B.* who libels against *A.* to account to him, a Prohibition does not go. *R. 2 Rol. 283. l. 10.*

But, if a Suit be for a temerarious Administration, and hindering him from making an Inventory of the Goods, a Prohibition goes; for by these Means the Property of the Goods will be there determined. *R. 2 Rol. 287. l. 45.*

Or, the Husband of an Administratrix be sued, after the Death of his Wife, for wasting the Goods. *R. 2 Rol. 302. l. 32, 40.*

So, if a Suit be to repeal an Administration, without Cause, after a Grant of it, a Prohibition goes; for their Power is executed. *D. Cro. Car. 63, 202. R. 1 Sid. 179, 372. 1 Lev. 186, 305. Ray. 93. Vide Administrator, (B. 8.)*

Yet, if Surprise or Collusion in obtaining the Grant be suggested, a Prohibition does not go. *R. F.g. 304.*

So a Prohibition shall go, if a Suit be for Administration from the Archbishop, &c. where there are not *Bona Notabilia.* *Per North, 1 Mod. 211.*

(G. 19.)
Exhibiting an
Inventory.

So the Ecclesiastical Court may require the exhibiting an Inventory of the Goods of a Testator, or Intestate, with their true Value, within a Year.

But if the Ecclesiastical Court charges the Executor or Administrator above the Value of the Goods, because an Inventory was not duly exhibited, a Prohibition goes. *Popb. 58.*

(G. 20.)
Granting of
Guardianship.

So the Spiritual Court may appoint a Guardian or Curator for the Goods of an Infant, who has no Land. *R. 2 Lev. 217.*

Which Curator may sue there for detaining the Infant. *Dub. 2 Lev. 219.*

But, if an Infant has a Guardian by Tenure or Will, or otherwise by the Common Law, the Spiritual Court cannot appoint a Curator for the Infant. *2 Lev. 217.*

So, if a Libel be, that a Curator appointed by the Spiritual Court, generally, ought to have the Custody, a Prohibition goes; tho' in the Answer to the Suggestion it be insisted only, that the Spiritual Court shall appoint, where none is appointed by the Common Law. *R. 2 Lev. 217.*

And it is sufficient for a Prohibition, if it be suggested, that the Father has appointed a Guardian, without saying, how. *Per Scrogs, 2 Lev. 219.*

(G. 21.)
Accounting
by an Execu-
tor, or Admi-
nistrator.

So the Spiritual Court may require an Executor, or Administrator, to account before them. *1 Rol. 123, 358.*

So the Spiritual Court may oblige an Executor to make Distribution to One, of his reasonable Part of the Goods of the Testator, according to the Custom of *York*, tho' Remedy may be by the Common Law. *R. 2 Lev. 128.*

(G. 22.)

(G. 22.) The Spiritual Court, having Jurisdiction, shall proceed, tho' it be contrary to the Rules of the Common Law.

Where the Spiritual Court has Conusance and Jurisdiction of the Matter, a Prohibition shall not be granted, tho' the Proceeding there differs from the Rules of the Common Law; as, if a Woman after a Divorce *Causâ Adulterii*, by which the Marriage is not dissolved a *Vinculo*, sues there, for Defamation within their Conusance, without her Husband. *R. 2 Rol. 298. l. 30.*

Or, if a *Feme Covert* be sued there for an Offence within their Conusance, without her Husband. *2 Rol. 298. l. 40.*

So, if a Woman sues for a Separation *propter Sævitiâ*, and upon Sentence for the Husband, the Wife appeals; the Husband, at his Charge, shall transmit the Record. *Semb. Cro. Car. 16.*

So, if a Release of the Husband, of a Suit or Costs, pleaded to a Suit by a Wife divorced *Causâ Adulterii*, be disallowed. *R. 2 Rol. 301. l. 5.*

So, if a Suit be for double Damages, in not setting out of Tithes, against an Executor; tho' an Action does not lie by the Common Law against an Executor, upon the *St. 2 Ed. 6. 13.* for the not setting out of Tithes by the Testator. *R. Ray. 95.*

If a Suit be there by an Administrator of an Executor against the Executor of another, for a Legacy by the first Testator. *R. Ray. 123.*

If the Executor of an Appellant proceeds upon an Appeal by his Testator; for an Appeal does not abate. *R. 2 Lev. 6.*

If a Charge of Slander be, that he spoke such Words, *vel his similia.* *R. 2 Cro. 159.*

If they cite a Corporation, by the Members in their natural Capacity. *R. Skin. 27.*

So, where a Thing is merely of Spiritual Jurisdiction, a Prohibition shall not be granted, tho' Proof be disallowed, which would be sufficient for the Fact at the Common Law; as, if a Probate of a Will for Personal Estate be disallowed because the Proof of it is made only by a single Witness. *Vide Ante, (F. 13.) —Post. (G. 23.)*

So, if the Probate of a Nuncupative Will were disallowed, being proved only by one Witness. *Carib. 143.*

(G. 23.) So, where it has Conusance of the Principal, it shall determine that which is Incident.

So, if a Suit be in the Spiritual Court for a Thing within their Conusance, and a Temporal Matter becomes incident, it shall be determined there, and no Prohibition goes. *12 Co. 65. Sti. 10. Carth. 143.*

As, if in a Suit for Tithes, Payment be pleaded, and denied; it shall be tried there. *R. 2 Rol. 305. l. 55. 1 Rol. 12.*

Tho' the Suit be founded upon a *Modus decimandi.* *2 Rol. 305. l. 50. Hob. 247.*

So, if Simony be pleaded for it may be tried there. *R. Cro. El. 642.*

So, in a Suit for a Legacy, if a Release be pleaded, it shall be tried there. *2 Rol. 307. l. 10. 1 Rol. 12.*

Or a Judgment, and no Affets *ultra*, and it be replied, that the Recovery was by *Covin.* *R. Mo. 917.*

If to a Suit for Tithes, an Award be pleaded, and denied; it shall be tried there. *R. 1 Rol. 12.*

So, if a Suit be there for Repairs of a Church, and that by Custom the Constable ought to collect; a Prohibition does not go, if nothing be disallowed which is allowed by the Common Law. *R. Hard. 510.*

If, in a Suit for Tithes arising upon his Land, the Defendant says, that it is the Land of another. *1 Sid. 89.*

That the Land lies in another Vill. *R. 1 Sid. 89.*

If, in a Suit for Tithes, the Defendant says, that he agreed with the Parson for his Life, paying so much *per Ann.* and the Plaintiff insists, that for Default of Payment, the Agreement is determined; for the Contract is not disputed, but the Payment only. *R. 2 Rol. 42.*

If, in a Suit for Tithes, the Defendant says, that he severed them, and permitted the Gate to be open for the Parson to take them; and the Issue be, that the Gate was not open. *Cro. El. 843, 4.*

If a Suit be for a Way, by Prescription, for carrying away of Tithes, and the Defendant says, that the Way is in another Place. *R. Jon. 230.*

If a Suit be for Tithes, and the Defendant claims the Rectory by Feoffment, which is denied; it shall be tried there. *2 Cro. 270.*

So no Prohibition goes, tho' the Right be settled by Act of Parliament, if the Proceeding there be conformable to the Common Law: As, in a Suit by a Mortgagor for Tithes, where the Estate, by a Private Act of Parliament, was transferred from the Mortgagee to Sir *W. Juxon*, who claimed there *pro Interesse suo*; for he is not intitled by the Common Law to the Tithes, till he has recovered by Ejectment. *R. 2 Lev. 64.*

But a Prohibition shall go, if the Spiritual Court proceeds after the Thing is discharged by the Common Law: As, if a Suit be for Punishment of an Offence within their Conusance, after a Pardon. *Vide Ante, (F. 12.—G. 8.)*

As, for Defamation, after the Offence charged by the Words is pardoned. *R. Mo. 855.*

So, if the Suit in the Spiritual Court charges those, who are discharged by the Common Law.

If it charges a Defendant with Costs in a Suit *ex Officio*, and not between Party and Party. *Dub. Hard. 503.*

Or, charges him only, who is not to be charged alone by the Common Law: As, if a Parson sues a Lessee of Parcel of a Rectory solely, for a Portion of Tithes payable out of the whole Rectory. *R. 1 Leo. 111.*

So, if a Suit in the Spiritual Court be determined contrary to the Right by the Common Law; as, if a Suit be by the Executor of *A.* for a Legacy given jointly to *A.* and *B.* because the Spiritual Court does not allow Survivorship. *R. 2 Lev. 209.*

If an Award, &c. pleaded be disallowed, when it is good by Law. *R. 1 Rol. 12.*

So, if the Spiritual Court disallows Proof sufficient by the Common Law: As, Proof of Payment by one Witness. *R. Hutt. 22. R. Mo. 909. Per Hale, 1 Vent. 291. 2 Rol. 439. Cro. El. 666. Vide Ante, (F. 13.—G. 22.)*

Or, Proof of the Revocation of a Will, by a single Witness. *Carth. 143.*

So, if the Spiritual Court disallows a Plea of *Misnomer*, where the Defendant is called Baronet, when he is only a Knight. *R. Ray. 219.*

But there shall not be a Prohibition, upon a Suggestion that the Defendant had only a single Witness, if such Proof be not offered in the Spiritual Court, and refused for the Insufficiency of the Proof. *Carth. 144. R. 2 Cro. 270.*

Or, upon a Suggestion, that a Witness is rejected as not Credible, when he would be a good Witness by the Common Law. *Carth. 143, 4.*

Or, upon a Suggestion, that the Proceeding there was *ex mero Officio*, without a Presentment, or proper Accusation: For this lies within their Conusance; and if they do it, the Remedy shall be by Appeal. *R. 2 Vent. 44.*

(H. 1.) Proceedings to obtain a Prohibition.

BY the *St. 2 (or. 2 & 3) Ed. 6. 13.* If any sue a Prohibition, &c. he shall deliver to the Justices of the Court a true Copy of the Libel, &c. under his Hand, and under it the Suggestion.

And before a Prohibition granted there ought to be Notice to the other Party.

And therefore, it shall not be granted upon Motion the last Day of the Term; for it is sufficient to have a Rule for Cause the first Day of the next Term. *Lat. 7.*

So, upon Notice, the Party upon a Surmise shall discharge the Suggestion before it is entered upon Record. *1 Leo. 11.*

Or, the Court may discharge the Rule for a Prohibition *nisi*, &c. without putting the Parties to join Issue, or demur. *1 Sid. 163.*

[If the Ecclesiastical Court appears clearly to have Jurisdiction, and have pronounced Sentence, the Court will not even grant Rule to shew Cause. *Symes v. Symes, T. 32 & 33 G. 2. 2 B. M. 813.*]

[There must be an Affidavit, that the Copy of the Libel is a true one. *Barnes 427.*]

[If a Civilian cannot be got to argue for it, none shall be heard against it. *Barnes 428.*]

So the Suggestion ought to be positive, and direct; for if a Suggestion, for a Prohibition upon a Libel for defamatory Words, says, that the Words, if they were spoken, were all at one Time, it is bad; for the Words ought to be confessed. *1 Vent. 10. Lut. 1043.*

So, if a Prohibition be to a Temporal Court, there ought to be a Suggestion. *R. 1 Lev. 253.*

If a Prohibition be granted, it ought to be served before a subsequent Proceeding to Sentence, or Appeal. *Vide Post, (K. 1.)*

And if it be served, and the Judge proceeds afterwards, an Attachment goes; and he shall be examined upon Interrogatories, and fined for his Contempt. *2 Jon. 47.*

But if a Party be excommunicated for Want of an Answer after a Prohibition granted, yet the Prohibition may be served afterwards. *2 Cro. 429.*

(H. 2.) When the Suggestion ought to be proved.

By the *St. 2 (or 2 & 3) Ed. 6. 13.* If any sue a Prohibition, he shall deliver to the Justices a Copy of the Libel, and under it the Suggestion; and if such Suggestion be not proved by two Witnesses in six Months following, the Plaintiff in the Ecclesiastical Court, on Request, shall have a Consultation, double Costs, and Damages, to be assessed by the Court, &c.

The Proof ought to be within six Calendar Months after the *Teste* of the Prohibition. *Sal. 554.*

[If the Declaration is ordered to be amended, the Time for proving Suggestion is computed from Amendment. *Barnes 428.*]

And by Credible Witnesses. *R. 2 Bul. 154.*

But it is sufficient, if Proof be made within six Months, tho' it be not recorded till afterwards. *R. Noy 30.*

And it may be made in the Vacation. *Noy 30.*

Proof of the Suggestion is requisite in all Cases, where the Matter suggested is merely Matter in Fact: As, if a *Modus* be suggested. *Godb. 245, 6. Carth. 463.*

Or a Payment, &c. by a Lord of a Manor, for himself and his Tenants, for the Benefit of the Parson. *1 Rol. 3.*

And all the Suggestion, which goes to the Advantage of the Parson, ought to be proved. *R. 1 Rol. 2, 3.*

So, if the Suggestion be, that the Land was barren Heath, improved within seven Years. *R. Cro. Car. 208. Adm. Dy. 170. b. D. cont. Yel. 102, 119. R. Jon. 231. 2 Sbo. 92.*

Proof of a Suggestion is necessary, where a Prohibition is to a Suit for Tithes Predial or Personal, given to the Spiritual Court by the *St. 2 Ed. 6.* or to a Suit for Mixt Tithes or Oblations, given by the *St. 27 H. 8. 20. and 32 H. 8. 7. 2 Inst. 662.*

Or,

Or, of a Suggestion of a Discharge by the *St.* 31 *H.* 8. *Adm.* 1 *Rol.* 55. 6. 2 *Rol.* 125.

Proof that the Plaintiff himself hath paid such a *Modus* is sufficient. *R.* *Noy* 28.

Or, that it is the common Fame, that there is such a *Modus*; or, that he has known it paid. *Noy* 28.

So, Proof by one Witness for Part, and by another Witness for the other Part of the Suggestion. *D.* 1 *Vent.* 107.

So Proof of so much of the Suggestion, as shews a good *Modus* to oust the Parson, is sufficient; tho' it varies from the *Modus* suggested;

As, if the Suggestion be of a *Modus* of 4*s.* and the Proof of a *Modus* of 4*s.* 6*d.* Or, two Closes, and the Proof of only one, &c. *R.* *Mo.* 911.

But Proof is not necessary, where the Suggestion is, that Tithes are not due by Law; as, where the Suit is for Tithes of Tiles, Turf, Stone, &c. 2 *Inst.* 662.

So, if the Suggestion be, that the Parson leased, or agreed for his Tithes. *R.* *Yel.* 102, 119.

Or, that they are discharged by Award. *R.* 1 *Rol.* 55.

So Proof is not necessary, where the Suggestion is in the Negative; for a Negative cannot be proved: As, that a Parson is not inducted. 2 *Inst.* 662.

That the Land does not lie in the Parish. *Ibid.*

That the Parsonage is not impropriate. *Ibid.*

So, if a Prohibition be prayed upon a Discharge by the King's Patent, the Patent ought to be produced, being upon Record. *D.* 1 *Vent.* 120.

(I) Declaration upon a Prohibition.

THE Declaration in Prohibition is founded upon the Attachment for a Contempt supposed in him, who neglects the Writ of Prohibition directed to him. 12 *Co.* 59.

In all Cases, where a Writ of Prohibition is sued, directed to the Party, or to the Judges, or to both, as it may be, if they proceed afterwards, there shall be an Attachment against them. *F. N. B.* 40. *D.* *usq.* *K.*

And therefore, a Declaration by the Party shall be *Qui tam*, &c. for it supposes a Contempt to the King. 12 *Co.* 61.

So a Declaration, which alledges a Prescription for a Discharge of Tithes, ought to shew that the Matters, for which the Libel is in the Spiritual Court, are within the Prescription; as, if the Prescription be, to be discharged for Tithes of Cattle reared for the Plough, it ought to alledge that the Libel was for Tithes of such Cattle. *R.* 1 *Rol.* 62.

If it prescribes, That all having Milch Kine in the Parish, and paying nine Cheeses, should be discharged of Tithes for Herbage, &c. it ought to alledge, that the Party has Milch Kine in the Parish. *Ibid.*

So the Declaration ought to shew a Place where the Defendant proceeded after the Prohibition served; otherwise the Plaintiff shall not have Judgment, tho' the Writ of Inquiry finds Damages. *R.* 1 *Vent.* 348, 350. *Ray.* 387. 2 *Jon.* 128. 2 *Sbo.* 145.

But two Persons cannot join in a Declaration upon a Prohibition, where the Cause of Complaint is several. *R.* *Cro. Car.* 162.

So, if the Writ of Prohibition be against Judge and Party, who live in several Counties, there must be several Attachments, and, by Consequence, several Declarations, tho' there was but one Writ. *F. N. B.* 40. *I.*

So, if there were several Writs, one against the Judge, the other against the Party, tho' they were all in the same County. *Ibid.*

So, if a Libel be against several Parishioners, who all insist upon the same *Modus*; they cannot join, but must have several Prohibitions. *R.* *Ray.* 425. *R.* *Yel.* 128, 9.

So, if a Man alledges a *Modus* for Discharge of Tithes, he need not alledge that he has paid the *Modus*. *R.* 1 *Rol.* 62, 3.

If

If he alledges Payment of the tenth Cock for all Tithes of Barley and Rakings involuntarily scattered, he need not say, that they are involuntarily scattered; for it shall come on the other Part. *R. Cro. El. 702.*

So, if there appears Cause for a Prohibition, there shall not be a Consultation, tho' the Declaration be defective for Want of Form; as, because there is not a *Profert* of a Deed, or Letters Patent. *Per Coke, 1 Rol. 332.*

Vide more concerning the Proceeding in Prohibition in Pleader, (3 H.)

(K) Consultation.

(K. 1.) When it lies.

BY the *St. de Consult. 24 Ed. 1.* If, on Sight of the Libel, the Justices see the Matter belongs to the Spiritual Judges; they shall write to them to proceed, *regia Prohibitionem non obstante.*

And therefore, if upon Motion for a Prohibition, when a Copy of the Libel is produced (as it ought to be) it appears that the Matter is of Spiritual Cognisance, no Prohibition shall go.

Or, if a Prohibition was granted without Notice to the other Party, and upon Motion, it appears, that there was no Cause for it; the Court will grant a Consultation, without putting him to declare upon the Prohibition. *Cro. Car. 97.*

[Consultation lies, though the Refusal of the Plea in the Spiritual Court was not traversed.]

[Though the Issues are immaterial.]

[Though no Verdict is found as to the Contempt.]

[And if Judgment is generally for a Consultation, whereas the Plea was only for two Parts, and the Libel for two third Parts, it is well.]

[If the Judgment is, *nil cap. per Billam*, and not *quod le Defendant eat sine die*, it is right, if there is also Judgment that a Writ of Consultation be granted; for that is the true Judgment. *Stratford v. Neale, M. 8 G. Fort. 350.*]

So, after a Prohibition granted, if, upon Trial, the Matter be found for the Defendant, generally, a Consultation shall go.

[If Prohibition is granted, on Suggestion of a Custom, and on Issue joined the Custom is found, but the Court, on Motion in Arrest of Judgment, find the Custom ill, a Consultation shall go. *Dent v. Coates, M. 14 G. 2. Str. 1145.*]

So, if the Matter found for the Defendant varies in Words, but not in Substance, from the Suggestion: As, if the Suggestion be, that *two Thirds of the Tithes* belong to the Plaintiff, and the Verdict is, *two intire Parts of all Tithes.*

So, if there be a material Variance between the Suggestion for a Prohibition, and the Libel in the Spiritual Court, there ought to be a Consultation; for the Prohibition ought to be founded upon the Libel: As, if the Libel be for Tithes of Corn, and a *Modus* be suggested for Tithes of Hay, upon Demurrer to the Declaration in Prohibition, a Consultation shall go. *Yel. 79.*

So, if there be a Variance in the Quantity: As, if the Libel be for 200 Faggots of Wood, and the Suggestion be as to 20 Faggots only. *Yel. 79.*

So if, after a Prohibition granted, it appears that the Spiritual Court has Cognisance for Part, a Consultation shall go *quoad, &c. 12 Co. 44.*

So, if after a Prohibition granted, it be not served till Sentence and Appeal, it cannot be afterwards used. *2 Cro. 429. Vide Ante, (H. 1.)*

(K. 2.) When not.

But a Consultation shall not be granted, except in Term. *R. 12 Co. 41.*

Nor, by a Judge, but only in Court. *Ibid.*

So, after a Declaration upon a Prohibition, it shall not be granted upon Motion, before Plea, or Demurrer. *Cro. Car. 238.*

So a Consultation shall not go, where a Verdict is found for the Defendant, if upon the whole Matter it appears that the Spiritual Court has no Conscience: As, if a Prohibition be upon a Suggestion, that all Lands in *A.* are discharged by a *Modus*, and there is a Verdict for the Defendant, because it is found that all, except ten Acres, are within the *Modus*; yet a Consultation does not go for such Mistake in the Issue, if the Libel was not for Tithes of the ten Acres. *R. 2 Rol. 320. l. 5, 15. Hob. 192.*

So, if the Suggestion was of Unity, *Ratione cujus* he shall be discharged, and a Verdict finds, that he shall not be discharged *Ratione inde*; tho' it be against the Plaintiff, yet being impertinent, for the Fact to be tried was, whether there was an Unity, &c. a Consultation does not go. *R. 2 Rol. 320. l. 35. 11 Co. 15.*

So, tho' there be an immaterial Variance between the Suggestion and the Libel, a Consultation does not go; as, if the Suggestion be for a total Discharge upon the *St. 31 H. 8.* and recites the Libel to be for twenty Faggots, where it was for 200; for it is not material for what Quantity the Libel was, when the Plaintiff claims a Discharge for the Whole. *R. Yel. 79.*

So, if the Suggestion varies, in Quantity, from the Libel, if it be conformable to the Copy of the Libel delivered by the Spiritual Court, this Variance shall not be a Ground for a Consultation. *2 Rol. 329. l. 45.*

[So if Plaintiff in Prohibition declares, that there is a Custom for the Occupiers of his Tenement to pay 5 s. in Lieu of Tithe of Corn and Hay, which *Modus* the Parson has always accepted, and Verdict for Plaintiff, there shall be no Consultation: for the *Modus* is found, though it is described, as a Custom, when strictly it should have been a Prescription. *Sharp v. Lowther, T. 9 G. 2. B. R. H. 292.*]

(K. 3.) No Prohibition after a Consultation.

By the *St. 50 Ed. 3. 4.* No Prohibition shall go after a Consultation, unless the Libel be ingrossed, enlarged, or otherwise changed.

And therefore, regularly, where a Consultation was awarded upon the Merits, the Party shall not have another Prohibition upon the same Suggestion.

Tho' he appeals and then prays another Prohibition. *R. Popb. 159. R. Lat. 6. R. Mo. 917. 1 Rol. 378.*

Tho' the Consultation be granted by another Court. *R. Cro. El. 277.*

Tho' he varies the *Modus*, upon which the former Prohibition was had. *R. 1 Rol. 378.*

(K. 4.)
Except where
the Consulta-
tion was upon
Matter of
Form;—and
other In-
stances.

But if a Consultation was awarded for Want of Form in the Suggestion, or Proceeding thereon, another Prohibition may be allowed. *Cro. Car. 208.*

As, if the Consultation was awarded for Want of Proof of the Suggestion within six Months. *R. Yel. 102. R. Cro. Car. 208. R. Jon. 231. R. Carth. 463.*

In another Suit for the same Matter, but not in the same Suit. *Mo. 917.*

If after a Consultation for Want of proving his Suggestion, the Party appeals, there may be another Prohibition to the Court, to which the Appeal was, upon the same Suggestion. *2 Rol. 500.*

So, if after a Consultation the Libel is enlarged, or changed: As, if the former Libel was, That Tithes had been paid Time whereof, &c. and afterwards it is added, That tho' the Prior, &c. were discharged, yet for twenty, thirty, or forty Years, and Time whereof, &c. Tithes were paid. *2 Rol. 207.*

So, if a Consultation goes for a collateral Matter: As, if the Plaintiff was nonsuited.

So, if the Suggestion was for a *Modus* of Tithe of Lambs in a particular Farm, and thereon a Consultation goes; another Prohibition shall go upon a Suggestion of the same *Modus* in the whole Parish. *Semb. * 2 Vent. 47.*

* [Cont.—
The Case
cited is here
reversed. The
first Sugges-
tion was as to
the Parish, and the second to the particular Farm.]

So, if Consultation goes, and there be afterwards a new Libel for the same Species of Tithes in another Year; a Prohibition shall go upon the same Suggestion as was tried before. *Adm. Yel. 102.*

So,

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So, if a Consultation goes, and the Party against whom appeals; the Appellee may have a Prohibition, tho' the Appellant cannot have it. *R. Popb. 159.*

So if, after a Consultation, the Plaintiff pleads the same Matter (which was suggested, and found against him at Common Law) in the Spiritual Court, which is accepted, and proceeds there for Trial, the former Defendant may have a new Prohibition; for they cannot try in the Spiritual Court a Matter determined by a Trial at Common Law, which was proper to be there tried: As, if a Discharge within the *St. 31 H. 8.* was suggested. *R. 2 Rol. 319. l. 45. Hob. 286.*

Prohibition to the Admiralty.

Vide Admiralty, (F. 2, &c.)

Prohibition of Waste.

Vide Waste, (A. 1.)

P R O M I S E.

Vide Action upon the Case upon Assumpsit.—Temps, (G. 18.)

P R O M I S S O R Y N O T E.

Vide Action upon the Case upon Assumpsit, (A. 2.)—Merchant, (F. 15, &c.)

P R O M O T E R.

Vide Information.

P R O M U L G A T I O N O F A L A W.

Vide Parliament, (G. 23.)

P R O P E R T Y.

(A) The Original of Property.

IUS in Res inferioris Naturæ Deus humano Generi indivisim contulit; hinc factum, quod quisque in suos Usus arripuit, sui Proprium devenit. Grotius de Jure Belli & Pacis. l. 2. c. 2. S. 2.

(B) How Property is vested, or divested.

THE Property of Goods vests in another by Succession, Grant, Sale, Caption, &c. *Vide Biens, (D. 1, &c.—E.)*

So, if a Man pledges Goods to another, he has a Special Property. *Vide Mortgage.*

So, if a Man forfeits his Goods, the Property is thereby altered; as, after a Condemnation and Proclamation in the *Exchequer* of Goods as forfeited, the former Owner cannot maintain Trespass, or *Trover* for them. *R. Ray. 336.*

In what Things a Man has a Property.*Vide Biens, (F.—G. 1, 2.—H.)**Vide Action upon the Case, per Totum.—Charters, (A.)—Justices, (O. 7.)—Market, (E.)—Pleader, 2 S. 8.—3 M. 9, 17, 39.)—Trespass, (B. 4.)***P R O R O G A T I O N.***Vide Parliament, (O. 1, 2.)***P R O T E C T I O N.***Vide Abatement, (F. 11.)***P R O T E S T.***Vide Merchant, (F. 8, &c.)***P R O T E S T A T I O N.***Vide Pleader, (N.)***P R O T H O N O T A R Y.***Vide Courts, (C. 4.)***P R O V I S I O N.***Vide Provisor.***Provision for a Wife.***Vide Chancery, (2 M. 12, 13, 14.—3 E. 1, 2.—3 Z. 1, &c.)***— for Children.***Vide Chancery, (3 Z. 4.—4 H. 2.)***P R O V I S O.***Vide Condition, (A. 2.)*

PRO.

PROVISOR.

(A) Provision.

(A. 1.) How usurped.

IN the Time of *H. 1.* The Pope usurped the Donation to Bishopricks, and all other Ecclesiastical Benefices. *Dav. 90. a. Vide Popery.*

And by a *Can.* in the Synod of *London A. 1107* with the King's Assent, it was decreed, *Quod nunquam per Donationem Baculi Pastoralis, aut Annuli, quisquam per Regem, aut aliam Laicam Manum investiretur in Angliâ.* *Dav. 90.*

And in the Time of *John*, the Pope granted a general Bull of Provision for all the Benefices in the Kingdom. *Dav. 94. a.*

So, in the Time of *Ed. 2.* *Dav. 95. b.*

And in the Minority of *Ed. 3.* The Pope, by his Bull, made an Alien Cardinal in *England*, and gave him Power to provide for all Ecclesiastical Promotions, *cum vacare acciderint.* *Dav. 95. b.*

(A. 2.) How restrained.

But by the *St. 25 Ed. 1.* (which was the first Statute against Provisors) it was declared a Contempt of the Crown, to bring in Bulls of Provision, &c. *Dav. 95. b.*

By the *St. 25 Ed. 3. St. 6.* (in which the former Act is recited) the King and his Subjects shall have the Right of Patronage; Election of Prelates shall be made according to the antient Grants of the King: And no Bull of Provision shall be put in Execution; but the Provisor shall be attached, fined, and ransomed at the Will of the King, and imprisoned till he renounce the Benefit of his Bull, gives Satisfaction to the Party grieved, and Sureties that he will not afterwards offend. *Dav. 86. b.*

PROVOCATION.

Vide Justices, (M. 9, 15.)

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Purchasing a Title.

Vide Maintenance, (A. 5.)

P U R L I E U.

Vide Chase, (I. 1, 2.)

PURPRESTURE.

(A) *What shall be.*

PURPRESTURE is derived from the Word, *Pourpris*, which signifies an Inclosure. *Co. L. 277. b.*

Purpresture is, when a Man by Building, Inclosure, or unlawful using of any Liberty, encroaches upon an Highway, publick River, or any Demesne or Land of the King, or another. *Co. L. 277. b. Manw^d. 172, 176. Nom. Verb. Pourpresture.*

If a Man builds an House upon his own Soil, or the Wast in a Forest, it will be *Purpresture*, and may be pulled down, or he may be fined at the Discretion of the Justices of the Forest. *R. Dy. 240. b.*

So, if he erects a Beacon there. *R. Dy. 240. b. in Marg.*

Or makes a Causeway there. *Ibid.*

If the Erection be upon the King's Manor. *Jon. 277.*

If *Purpresture* be by Erection of Cottages, &c. upon a Forest within the King's Manor; tho' the King grants the Manor to *A.* it shall not be a Dispensation of the *Purpresture*; but it shall be pulled down in the Hand of the Patentee. *R. Jon. 277.*

Vide Chase, (L.)

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